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Human Destiny in Human Hands

Harry Olson

HUMAN DESTINY IN HUMAN HANDS

JUDGE HARRY OLSON of Chicago.

The subject given me was the "Psychiatric Treatment of Criminals," but in view of the larger significance of the eugenical aspects of the subject, I have christened my talk, "Human Destiny in Human Hands." I shall approach the subject, however, from the side of the cause and prevention of crime. That subject is most timely.

The loss of life and property by criminal means is steadily increasing in this country, as is the cost of police, prosecutors, courts, jails and penitentiaries. The failure to suppress or reduce crime is most frequently charged to the inadequate procedure, poor administration, as well as lax enforcement of the criminal law.

The American Bar Association responded to the public demand that crime be controlled and suppressed by urging a stricter enforcement of the criminal law and by appointing a committee to investigate the subject. One committee has made a report on conditions in Europe.

From a report this committee has already made and from the fact that leading members of this committee are committed to the belief that crime is due to wickedness, and not mental defect, its report to the American Bar Association was based upon this conviction. Indeed a member of this committee speaking before the American Bar Association at Cincinnati challenged the suggestion that it is possible to inherit criminal tendencies. "Heredity," said he, "aside from the parental example has nothing to do with the matter." * * * "Usually the criminal is from an honest father and mother."

It would seem appropriate therefore, on an occasion like this, briefly to review our traditional attitude toward the cause and prevention of crime and to note the changes in that attitude which are being brought about by a study of the criminal himself in the light of our experience, and the illuminating disclosures of science, notably the rediscovery of Mendel's Law of Heredity and the recent revelation that there is a high correlation between emotional defect and social behavior.

The cause of crime traditionally has been wickedness, perversity, viciousness. When church and state were one this explanation seemed especially appropriate.

The problem of crime is in reality the problem of crime pre-

vention. Historically the prevention of crime has been through,

a. Killing the criminal;
b. Confining the criminal;
c. Deterring others by the force of example.

Applied with great vigor the above program can and has kept crime relatively low, but the most oppressive penalties have never deterred all wrong-doers.

When it was observed that capital punishment, as applied to a large number of common offenses, failed to deter many others, there was a change of policy whereby capital punishment was reserved for a few of the most serious crimes.

This increased the number of prison sentences, and penology became the important sector of criminal law science.

Since some offenders do not twice offend, and since confinement is a costly and difficult process, the idea of reform became conspicuous. For the past 100 years the theory of reform has been the dominant idea.

Reform has been accepted generally as the object of confinement. When confinement is not followed by a subsequent offense, it is credited with a cure, or reform.

There are enough such instances to make the theory of confinement and reform appear plausible.

But in many instances the theory fails. The first confinement is seen to be only the first stage in a career of crime.

These failures, universal and persistent, have led to skepticism and analysis and to a wide variety of types of confinement and treatment.

Confinement is looked to for reform, but when it fails it is readily seen to be no ideal environment for penitence, but rather a school for crime.

Confinement thus comes to be looked upon as dangerous in itself, especially to first offenders An alternative is sought. The alternative is probation—a system of organized social control. We have now had probation a sufficient time to know that it too fails in a large percentage of cases, and can seldom be safely applied to the more serious fundamental felonies.

Different criminals are seen to react differently to the same experiences. Hence arose finally the effort to locate the secret of crime in the *criminal himself*.

So came the study, understanding and classification of the criminal, with the establishment of definite physical and mental

types. Such a variance is found that reaction to any single standard treatment is impossible.

Some individuals fail to respond favorably to any kind of treatment—probation, correction, reform or what not. Intensive study of these recidivists reveal defects both physical and mental.

A considerable percentage of inferior intelligence is found among the repeaters, or unreformable. The conclusion is hastily reached that low intelligence explains all crime, or at least all failures to reform.

Further testing shows that there are many criminals who have average intelligence or better, and that there are many persons definitely feeble-minded who never commit any offenses. So the feeble-minded theory as a sole explanation of the recidivist fails.

Then came the discovery that defects of the emotions were conspicuous among the unreformable and dangerous criminals to a remarkable degree. Especially lack of normal feeling and emotion was found among criminals who commit brutal crimes, such as the fundamental felonies, robbery and burglary, homicide incident to robbery and burglary and assaults upon women.

Here the circle is completed—the early explanation of the criminal as a wicked or vicious person is reached again, but with added light, inasmuch as mental and neurological defects account for the perversity.

High skill in diagnosing these defects, especially those of the emotions, make it possible to ascertain in advance of the commission of crime that the individual is likely to break down under temptations which normal persons invariably withstand.

With this knowledge, to permit these defectives to have "one chance" and thus start them on the treadmill of crime and restraint is no kindness to them. And since their history is practically always one of minor offenses committed at an early age, and more serious ones later, it is a practical program to postpone diagnosis and treatment until the objective sympton of violating the law is observed. In other words, we must subject the criminal at an early stage to examination and sort out those having typical defects, placing those who combine intelligence defect with emotional under permanent restraint before the age for serious crimes is reached.

The testing of large numbers of offenders in a consistent manner and the observation of the unreformable type, proves itself by records of conduct. It proves that prognosis can be based upon laboratory data.

The recording of external data fortifies the laboratory data. It is found that cases of low intelligence or of abnormal emotion, or both, are in most instances traceable to heredity.

Up to this point the study of crime has been practically an independent investigation of genetics. Here it receives aid from biology and genetics. Crime is seen to be a social defect based upon mental defect, and the mental defect is seen to be typical of the two great divisions of the mind—the intelligence and the emotion divisions. And instead of being a sporadic thing, appearing by chance in individuals, the accumulated case records show that, like all physical mental traits, it runs in family stocks and is subject to the laws of genetics like other charactertistics.

Because of social interest in the phenomena of crime, and the organization to combat crime, the most imposing and the most intensive of society's functions, the study of genetics in humans is more readily pursued in reference to criminal traits than any other traits.

Crime prevention, finally, is seen to be the weeding out of defective stocks, and is a part of the eugenics program. Being most readily discovered, and most universally abhorred, crime control becomes the first step in the eugenics program.

Crime prevention, as the first step in a nation-wide eugenics program, becomes the concern of the public school teachers, the biologists, psychiatrists, the medical profession in general, and intelligent lawyers and statesmen. When the problem is attacked by these forces laws will be enacted embodying modern scientific knowledge, the enforcement of which will give the legal profession and the courts a new and better opportuity to curb crime.

As it is, the legal profession and the courts are dealing with laws obsolete from the scientific aspect. Not only is the legal profession necessarily behind scientific discoveries, but as Professor McDougall says, it is also behind public opinion.

"Where law is imposed and long maintained by the authority of despotic power, it will, of course, mould public opinion, but in any progressive, highly organized nation law and lawyers are always one or two or more generations behind public opinion. The most progressive body of law formally embodies the public opinion of the past generations rather than of the generations living at the time."—Page 265, The Group Mind.

Our laws now deal with the criminal largely on the basis that he is a normal person who knows the right, yet prefers to pursue the wrong, and that this perversity is due to bad environment and an inadequate education and insufficient discipline. For ex-

ample, the test of responsibility for crime where insanity is involved was laid down in 1842 and continues to be the test in most states to the present day.

Occasionally an American court has gone beyond the right and wrong test and held that one may not be responsible for a criminal act even if he had a knowledge of right and wrong. In Parker v. State, 81 Alabama, it is held that one is irresponsible.

"(a) If, by reason of the duress of such mental disease, he had so far lost the power to choose between the right and wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed.

"(b) And if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it solely."

This decision was rendered by Judge Summerville more than thirty years ago and from that day to this it has been a leading case, first because it was in conformity with our experience, and secondly because it was in conformity with scientific facts discovered since it was written. From the brief submitted in that case I assume the judge was influenced by the German Code concerning responsibility for crime which was written by the great Kraepelin. Paragraph 51 of the German Code reads as follows:

"There is no punishable act, if at the time of commission the actor was in the state of unconsciousness or of morbid disturbance of the mental faculties which excluded the free determination of his will."

It will be seen from the text of this paragraph that the question of guilt is identical with the question of mental soundness.. The distinction made in statutes between insanity and other mental defects on the other hand, should not have been made. All mental defects should be considered in fixing responsibility and punishment. Laws have taken into account mental defects where the emotions have been exaggerated, that is the *hyper*-emotional, because the defect was patent to the layman, but have ignored the mental defects in which the normal emotions were lacking, the *hypo*-emotional. Medical science has advanced since 1848 and until legislation shall check up with scietific advance, the courts will not be safe bulwarks against crime waves.

The functions of the courts today are the enforcement of statutes which are far in arrear of medical opinion.

Then, too, American courts have been influenced by the opinions of English courts in dealing with insanity and the English courts were not abreast of science. As late of 1862 the Lord

Chancellor of England, in the House of Lords, declared that the "introduction of medical opinions and medical theories into this subject of insanity has proceeded from the vicious principle of considering insanity a disease."

The direct route out of this legal impasse is by legislation which expresses modern scientific opinion. For securing such legislation the education of the lawyer and of the judge is likely to be very helpful, if not absolutely requisite. It is hard to conceive of any legislature enacting an adequate law until the lawyer members have been shown that the facts back of the law as it is are not what they have traditionally been assumed to be. And unless the judges of the highest courts get a more correct understanding there will be danger of ignorant and hostile interpretations of the law, thus defeating its purpose.

What we may call an indirect way of modernizing the law is by judicial decision. We can hardly expect courts of review to take the initiative. It is conceivable that some supreme court may before long acquire a scientific conception of the problems lying beneath the trite terms of "criminal intent" and "criminal responsibility" and may deliver an enlightened opinion which will re-establish the law in conformity with our present-day learning. But in order to bring this about it is almost necessary for lawyers to comprehend the subject and conduct their trials in the light of science. That would enable them to do two useful things: (a) get the needed facts in the record,and (b) brief the case in an informative and convincing manner.

The impending change may come through legislation, or it may come through judicial decision. Education is needed on all hands to speed the day when the belief that insanity is a disease will not be looked upon as a "vicious principle." That our courts of review are not being apprised of the actual situation in regard to the mental defects of defendants appear often in reported criminal cases.

A case in point was heard in the supreme court of a central western state. People vs. Olander, Iowa. (Olander executed.)

The editor of a law bulletin sent me the court opinion in this case, requesting me to comment upon the court's opinion regarding the theories of punishment. I replied that the theory of the court on punishment left nothing to be said on that subject, but that a reading of the opinion showed that the court below, and therefore the state supreme court, received no testimony regarding the mental status of the defendant; that, in my opinion he was feeble-minded plus dementia praecox katatonia. This opinion I gathered from the statement of the case by the judge.

The salient facts on which I base the opinion that the defendant in that case is a mental defective of the type of propfhebephrenia are the cold-blooded nature of the crime, the fact that he had been engaged in other robberies, the family history—the father having deserted the mother while the defendant was quite young—the youthful records of the defendant, who at fifteen years of age was sentenced for larceny to the industrial school where he remained two or three years, and finally by a letter the defendant wrote to the victim's wife, a typical feeble-minded production, containing what the French call *perseveracion.*

To the inexperienced these facts may seem very meager, but they are enough to warrant the opinion I have expressed, and which I believe would be confirmed by a medical examination of this defendant by a competent psychiatrist. He was sentenced to hang August 11th, last but the case has been appealed.

Here we have a case where the lower court and the supreme court have nothing before them in the record, except what I have noted, as to his mental status, and no medical examination of the defendant was made, nor was any claim of insanity interposed by counsel. In the court below he was assumed to be a normal person, fully responsible. The dissenting opinion contains an interesting reference to the responsibility of society, which the judge blames for producing such an individual, by not providing a proper environment. This view is typical and needs to be combated. Note this portion of the dissenting opinion:

"The defendant's crime is not to be extenuated by reference to the conditions into which he was born and in which he was developed into a desperado. These are sufficiently referred to in the majority opinion. It remains true, nevertheless, that he is the product of our times. He was not the creator of the maelstrom of crime and lawlessness into which he was drawn in common with the almost unbelievable numbers of young men and boys who are daily arraigned at the bar of justice all over our land. For this condition the state, the nation, the great body of our citizens, are all in some degree responsible, and until society shall awake to its responsibilities and dangers and adopt radical measures of reform by which the youth of the land may be won from idleness, immorality, and self-indulgence and inspired with ambition to make the most of their opportunities and lead useful and honorable lives, our oft-repeated hope that 'this wave of crime' will soon subside is doomed to disappointment, and they who place their reliance on the occasional apprehension of the defendant and hanging him by the neck until dead for the ushering in of a new day of peace and good order will have to recast their

theories or invent some new scheme to so increase the horrors of death as to paralyze the nerve of the hardened criminal.

"I am in favor of reducing the punishment of the defendant from death to life imprisonment."

The fundamental error of this dissenting opinion lies in the assumption that this youth is normal and that society can adopt radical measures of reform by which such youths may "be won from idleness, immorality, and self-indulgence, and inspired with ambition to make the most of their opportunities and lead useful and honorable lives." Society is responsible for such individuals, because it has not guarded the blood-stream of the race; because it permitted the defendant's parents to marry; because it ignored the influence of heredity in producing mental defectives capable of such crimes; because it permitted the defendant at large when his dangerous character should have been evident, but not because of the environment the judge assumes society has thrust upon the defendant. No better environment can be found in the United States than this central western state.

The crime in question is typical of its kind. We see hundreds of cases paralleling it in Chicago committed by those defective both intellectually and emotionally. The public need to know the dangerous character of this type in order that they made be segregated *before they commit crime* rather than afterwards. Many valuable lives will be spared to society when the community wakes up to the true condition and protects itself by timely measures.

The case of The State vs. Wade, 96 Conn., 238, is another case where the medical testimony did not disclose the true situation. Wheeler, chief justice, in deciding the case, said:

"The accused Wade was tried upon an indictment charging him with the commission of murder in the first degree by the killing of George B. Nott at Bridgeport on the 29th day of August, 1920. The state offered evidence to prove, and claimed to have proved, that Wade killed Nott in the manner charged, and that the circumstances attendant upon the killing disclosed deliberation, preparation, and premeditation, and a *cruelty so great as to characterize the homicide as one of singular ferocity.*"

The medical testimony in the case, both on the part of the prosecution and defense, was to the effect that under the Binet-Simon test Wade registered a mental age between 9 1-2 and 10 1-2 years. The opinion makes no mention of any testimony to the effect that Wade was affiliated with dementia praecox, a defect of the emotions, as well as being feeble-minded. The only clue in the opinion to the presence of dementia praecox is the statement of the court that he was guilty of "a cruelty so great as to

characterize the homicide as one of singular ferocity." Such cruelty associated with feeble-mindedness is characteristic of the type of defective which Dr. Bleuler of Zurich calls "propfhebephrenia."

This case, like the other one mentioned, shows that our supreme courts are not properly advised by the record as to the utter irresponsibility of such individuals.

I mention these cases for the purpose of calling attention to what seems to me to be the failure of lawyers and medical witnesses to present adequately to the lower, and therefore to the supreme courts, the true status of mental defectives in relation to crime, and as affecting the credibility of witnesses; also to warn lawyers against accepting the dicta of supreme court judges, who write opinions expressing views of mental deficiency based upon inadequate and sometimes incompetent medical testimony, incompetent in the sense that such witnesses are not sufficiently trained as experts, to give such testimony.

Harley Beard, an Ohio boy, slew with an axe his employer, a farmer, and also the latter's wife and mother when they came to his rescue. The boy then fled to Chicago. Dr. Moyer, on seeing his photograph, gave out an interview saying that the youth was a "moron." The Chicago Tribune asked Dr. Hickson to examine Beard. He was found to be eight years old mentally and to be affected with dementia praecox as well.

After the affirmance of Beard's sentence of execution by the supreme court of Ohio, and after the execution, two of the judges of that court, while visiting our laboratory, came across the record of the mental examination of Harley Beard, and *for the first time* were apprised of the true mental status of the youth. Thus are matters disposed of in the lower courts, and, as a consequence, supreme courts are not advised of the facts regarding mental responsibility. Supreme courts, on the other hand, are influenced in such cases by public opinion and sustain verdicts of juries in brutal and atrocious cases irrespective of what they assume to be fine distinctions in respect to insanity.

If the courts, both trial and appellate, dealt with these cases on their merits, legislation would soon be enacted segregating such offenders, *before the offense*, instead of seeking, in the traditional and futile way, to intimidate other defectives by hangings after worthy persons have lost their lives.

During an experience of ten years as a prosecuting attorney in Chicago I had occasion to try many criminal cases including seven which resulted in the infliction of the death penalty. These cases were tried prior to the rediscovery of Mendel's Law of

Heredity, and prior to the discovery of dementia praecox by Kraepelin and the development of its diagnosis by Bleuler. I noticed that most criminals appeared to be both physically and mentally deteriorated, but believed that they were what they were and did what they did because they were wicked and depraved, when if they wished they could have been moral and honest. Their lives, I suppose, were the result of a bad bringing up, a poor environment, bad example at home, and of an unchristian life in general. This was the traditional view of the legal profession, the judges and the public. The repeated failure of punishments to deter others often challenged our theories and the similarity of type of offender and offense attracted our notice. The uniformity in the number of crimes from year to year in proportion to the population, the similar character and conditions of crime, the fact that the criminal age began early and was between 18 and 24 years and that only about 2 per cent of the population were ever charged with crime seemed sufficient to indicate that there was something inherently defective in this percentage of the race. But the courts were not concerned with the criminal himself, only with the question whether or not he had violated the law. That was the sole test. If he had, the prescribed punishment was voted by the jury and the court sentenced. As the years went by with repeated crime waves despite our efforts, I began to feel skeptical of the wisdom of some of our laws and of our methods of crime suppression through the example of punishment. At one time we had fourteen under sentence of death in the county jail, when three more youths came up for trial for a murder committed incident to robbery. The state's attorney requested the court on a plea of guilty to sentence them for life to stop the legal flow of blood in order that the public might not be shocked by the spectacle.

Finally it fell to my lot to prosecute a youth, Richard Ivens, for the brutal murder of a young woman who was snatched from the public streets just before dusk and foully murdered. The alienists for the state testified that though he was backward, he knew right from wrong and was therefore responsible. I called nine of his school teachers who testified he was backward and I tried to guide the jury to a life imprisonment. But the jury executed him. Professor Munsterberg of Harvard telegraphed our supreme court where the case was pending for a supersedeas that the wouth was irresponsible and that his alleged confession was untruthful. Later Professor Munsterberg in his book, "On the Witness Stand," claimed that the confession was false and that this youth was innocent. This boy committed the crime and his confession was truthful, but I now know that he was feeble-minded, about nine years mental age and that he suffered from

dementia praecox, in addition, defects of both intellect and emotions, a condition to which Professor Bleuler of Zurich has given the name "propfhebephrenia." His crime was the result of his mental condition solely, and he was not responsible in spite of our laws and our alienists. This case so impressed me with the inadequacy of our methods because of our failure to study the criminal himself, that I concluded when soon afterwards I became head of the municipal court of Chicago, to put the cases of all youths between 17 and 21 years in one court known as the Boys' Court, and to create a psychopathic laboratory with a capable alienist at the head into which all defendants suspected of mental defects would be sent for examination in order that the court might be properly advised and the cause of justice promoted. It is not the intention or purpose of society or the law to hold the insane and irresponsible to the accountability of the sane and responsible.

Besides so many of this type owing to their poverty and that of their parents are not properly defended on the question of their mental status.

Where capital punishment is inflicted the insane and defective murderers are usually hung, while higher grade criminals of the type that commit crimes aginst public justice, embezzle from the city, county or state, bribe jurors and corrupt legislators, often go unwhipped by justice. Such hangings give the public the false impression that criminal law is effectively enforced while, as against clever criminals, it may be broken down. Many a prosecutor has made a reputation for efficiency by ferocity toward the insane, feeble-minded and irresponsible.

Before we opened our Laboratory Dr. Stewart Paton of Princeton told me that I should be careful in the selection of the alienist who was to head so large and important a clinic as I was about to institute. He told me at that time that Germany was twenty years in advance of England and the United States in the diagnosis of mental diseases and that I should put no man at the head of such a clinic who had not spent at least two years with Kraepelin or Bleuler. Dr. Frederick Mott of London confirmed what Dr. Paton said, and so guided by these eminent men I sought a director with such training and found him in Dr. William J. Hickson, at one time a member of Dr. Bleuler's staff at Zurich. Dr. Hickson's diagnoses brought to us an explanation for criminal behavior on the part of those who commit the crimes of robbery, burglary, homicide as the result of robbery and burglary, and assault upon women. These are cold blooded crimes and the emotions of the perpetrators of them are below zero. Offenders of this type we found were generally both feeble-minded and emo-

tionally defective. We found that a defective intelligence was a misfortune, a defective affectivity or emotion, a calamity, and a defective intelligence *and* effectivity, a catastrophe. The importance of the affectivity in its relation to the intelligence was a revelation to us which was emphasized in case after case. We found that defects of the basal ganglia or the seat of affectivity governed behavior more than defects of the intellect. The affectivity (emotions) is the gateway to the intellect, to our personality. It is the expression of our personality regulated by the intellect. The affectivity is the cement of our intellect. It holds it together and gives it form, meaning and substance. Flour, water, yeast and salt may be likened to intellectual entities. Their combination into bread illustrates the affectivity. Images, memories, attention, association, reasoning and judgment are intellectual processes and when emotions stir action, *behavior* results. It is therefore of the greatest importance in every sphere of human endeavor. Deviations therefore from the normal in this field are very important and press forward most urgently for solution. The largest group of such deviations is known as the dementia praecox group. Here we see plus and minus deviations from the normal of the most frightful consequence to the individual and his environment. Such affective deviation as is found in dementia praecox is plainly one of the most important roles in our social, commercial and industrial life. It is important for lawyers and judges to appreciate this fact in order to understand types of criminal behavior. It is especially important for the teacher to understand its significance because she must get to the intellect *via* the affectivity. It is important to the eugenist because he must get control of the affective factors in order to reach his aim. A study of defective affectivity will throw light on the normals as to their affectivity, which is much more significant and dynamic than their intellects.

After all, the real significance of this work is not confined by any means to what we started out to consider—the problem of crime. The quick and certain diagnosis of defectiveness in a number of definite classes is an addition to human knowledge and power which transcends such a limited field as criminology.

The persons of stunted intellect and moral defect are scattered all through society. They account for the greatest burden of educators, from the kindergarten to the university. They account for many of the wife desertions, the bizarre and often cruel domestic entanglements, and the divorces. They account for the carelessness, the irresponsibility, and the quarrelsomeness which check industrial production. They account for some of the needless civil litigation and for much of the lying of witnesses.

They account for much of the political looting of cities and states. In large cities the moral defectives of keen intelligence often induce the unsuspecting public to elect them to office. They flock together just as do men of high character. After having control of the machinery of government they leave an empty treasury, defective public works, a demoralized police department and they put upon the public the suspicion that they are indeed victims of "unmitigated democracy."

Moral defectives, both those with normal and those with inferior intelligence, supply the basis of sensational news for our newspapers. Ever since Mr. Pulitzer told the cub reporters: "If a dog bites a man, that is not news; if a man bites a dog, that is news," the bizarre conduct of mental defectives has appeared in great headlines. The fact that, in a well ordered society, the actors of these news reports would be in the insane asylum, does not alter the matter. Of course the public would soon tire of just such news coming from within the asylum as it now devours concerning individuals of the same type who are outside the asylum. So much has been written of the Burch case in Los Angeles that if the columns were pasted together they would circle the earth at the equator. And yet Burch was obviously a case of demenia praecox with paranoid trends.

Irresponsibility is the quintessential unsocial characteristic of both general classes of defectives, the morons and the psychopaths. The competent members of the community have to guard these defectives, endure their depredations and make good their waste—often doing all these things without being fully aware of the burden or the cause for it.

Now, what is the great menace from irresponsibility at the present time? Obviously it is the easy reproduction of the unfit. The majority of competent men and women are putting rigid limitation upon the number of their offspring. It is the natural reaction of their sense of responsibility. The defectives have as much instinct for reproduction as normals, some of them much more. They lack the innate inhibitions against easy and rapid reproduction.

And what has society done in the face of this threatening situation? Has it made it difficult or impossible for defectives to propagate?

On the contrary, society has devoted itself with frenzid zeal to encourage the propagation of the unfit. It does this in both indirect and direct ways; indirect by placing no bar to the union of the unfit, or the union of unfit with the fit; direct by exerting itself in every conceivable way that nature and science can sug-

gest to keep alive every child born to the unfit and to feed and develop every such child until he or she is old enough to reproduce (excepting, of course, the imbecile and the idiot).

Psychopathic surveys of definite districts in New Jersey, New York, Indiana, Minnesota, and other states in recent years have proved the tendency of subnormals to mate with their kind. They multiply more rapidly under the protected environment which modern society so generously provides than normal stocks, which subject themselves to severe limitations. This thing is going on in every state and every city, worse perhaps in some places than in others, but capable of spreading like typhus or plague from place to place.

There have always been defectives and defective stocks, but until quite recently the environment of northern peoples was so harsh and rigorous that the defective stocks tended constantly to be uprooted, to be bred out. The defectives had much the higher mortality rate, especially among infants. Now we find the ordinary conditions of a century ago, to go no farther back, absolutely reversed. The normals have cut their rate of reproduction and at the same time have actually invited defectives to multiply freely with a guaranty that their offspring will be coddled and nourished and protected and brought by every artificial means to an age when reproductive instincts will provide another generation.

At the present day the defectives are multiplying as never before in the entire history of the race. A great part of the earnest and zealous thought and effort of the community is bent upon enabling this degenerate stream to become wider. The limitation of offspring has foolishly been called race suicide. It is not. Race suicide lies in the encouragement of the unfit.

Of course nature will supply in time a corrective; if we are not clever enough to restore the equilibrium by conscious action. But nature's cure will mean a loss of what we call civilization as the route to the old conditions of privation and rigorous living. When neither normal nor defective has any hospital or asylum, but both must shift for themselves in a relentless struggle with natural forces, as was our history through countless ages, the unfit will again diminish and the fit be restored to their rightful ascendency.

It may be that this is the only way. Some of the alternatives are frankly unthinkable. We cannot deliberately reproduce the hardships of life which our forefathers fought and subdued. We cannot withdraw from the unfit the benefit of medical and surgical aid, the lying-in hospitals, the free clinics of a dozen kinds.

We cannot avoid protecting them from infectious diseases, from unwholesome food and from the depredations of their own kind and the wiles of the profit-seeking and ruthless normals. For our own protection we have to keep them and their offspring well. We cannot solve the problem by making over all our cities in protective environment so that the defective will have no opportunity to steal, or assault, or corrupt the young. That would be a swift descent to hell, for with a policeman on every corner and no saloon anywhere there would still be just as rapid reproduction as ever.

We cannot do what our ancestors did at a not remote period, put to death every incorrigible criminal. That would help us out to a considerable extent, but it is impossible. We cannot deport our undesirable stocks. We have not been able thus far to keep other countries from unloading on us. We cannot unsex all our defectives That would be the easiest, the cheapest and the surest method. It would purify the life stream in a few years. But public opinion will not at this time sustain such practices on a scale commensurate with the need.

We can eliminate the criminal and the hereditary insane by segregating them in farm colonies and by sterilization, and thereby reduce our taxes one-half.

We can deflect from the public schools dangerous defective types to protected and humane farm colonies before they come to the juvenile and criminal courts.

We can made the conservation of human resources the high aim of government and society.

We can cease to make the individual the unit of society.

We can make the family the true unit of society and by promoting racial hygiene increase the prestige and soundness of our nation.

In these directions, it seems to me, our attention must be given if we are to preserve and improve the quality of our national stock and thereby keep the American nation foremost in the family of nations. The future belongs to that nation which soonest and most effectively enforces a sound biological program.

To this cause we must give our allegiance. Private citizens of means, foresight and love for their fellowmen are investing in education and research in biology, phychology and psychiatry. We must promote general public information along these lines in order that wise legislation may be enacted, so that the unborn children of tomorrow may have a good inheritance. When the public understands the need and the possibilities, and realize that

to a much greater extent than we have heretofore known human destiny is in human hands, they will further a biological program with a zeal that characterizes religion, and set an example in our country that will redeem the world from many of its greatest afflictions.

There remains seemingly but one alternative, which is to segregate the defective delinquents in state controlled colonies where the protective invironment which they need can be created. Under such control there is an abrupt end to criminal depredations and to reproduction. Both great needs of society are met. The need of the individual defective is likewise met, for he is given an opportunity to live to the limit of his powers, whatever that limit may be in each individual case. He will have all his wories and troubles removed, existence will no longer be anguish and agony for him, but a sensible balancing of work and play.

These farm colonies for defectives are soon to be common enough. They will be in operation long before people generally realize the momentum which real race suicide has gained. They will greatly reduce the cost of the defective to society generally and to the state. For the defective will be able to pay his way when given proper restraints and wise management. And other institutions which are well intended, but have practically failed because defectiveness was not understood, will be relieved and permitted to accomplish some good.

The greatest limitation today upon immediate entry upon such a program is not the lack of public understanding or the inertia of legislatures, but the inability to produce on short notice the psychopathic experts who are qualified to sort out and classify the subnormals. It will take some time to provide the teaching staffs and to turn out such experts. There will be no lack of public opinion by the time the new type of psychological alienist is provided in sufficient numbers. And by that time the need for stopping the poisoning of the racial stream will be pretty thoroughly understood. Enormous revenues are required for the maintenance of insane asylums. This line of expenditure increases faster than any other, and yet there are more insane at large than in asylums. It lies within human power, though the complete ideal may never be achieved, to prevent insanity and defectiveness to such a degree that an outspoken case will be as rare as a case of leprosy.

We are forced to believe, in view of the accepted facts, that there must a turning of the tide before long.

From the contemplating of the criminal let us turn to the other extreme of mental and moral life.

The highest type normal mind is the one where both the intellectual and the emotional centers of the brain are of superquality. Such a mind had Abraham Lincoln.

Lincoln did not spring from poor stock. He was not so much the product of environment as he was of heredity. This fact cannot be too much emphasized for the good of our country. Neither the birth in an humble Kentucky cabin, the boyhood in the wilds of Indiana and Illinois, the hardships of the environment of his youth, nor the struggle against poverty of his young manhood moulded the great mind and soul of Abraham Lincoln. That mind and that soul were inherited from a blood stream that carried the traits of high ability, and of high ethics in rare combination.

Environment will create opportunities and will develop and discipline the character, but it will not alter in the slightest degree the qualities of the mind and heart which are of the blood solely. Lincoln inherited the qualities that made him great. Ever since his death environment has been credited with his success, and his parents, ancestors, and the race from which he sprung have been ignored as factors of supreme importance in his life. But now the science of biology—"the youngest of the sciences"—discloses the secret of his power and proves that he was the product of a great heredity.

The discovery and re-discovery of Mendel's Law of Heredity, the recent knowledge that the emotions govern behavior more than the intellect, that the chromosomes, those microscopic particals, forty-eight in every human being, half of which are inherited from each parent, carry the different traits which make us what we are, and that environment does not change nor affect these chromosomes in the slightest—all this comparatively recent knowledge—must, and has changed our views of the source of Lincoln's power from being environmental to hereditary. Scientists have long known that the brain was made up of layers, but have only recently come to realize that the brain has more than one function. It was long believed that the brain was our organ of thought, and that that was its only function. But now it is known that it also has other functions, one of the most important of which is to will—to control our actions and emotions. Only recently has it been learned that the seat of the emotions is the lower or basal layers or ganglia of the brain. Therefore we can trust the moral judgments of a democracy more safely than we can trust its offhand rational decisions. Men of very ordinary ability often are the pillars of society, where decency, ethics and moral standards are concerned. The people as a

whole will vote right, if they know the facts. To get this knowledge to them is the big task of democrtic statesmanship.

On the other hand, men of ability are often found wanting in ethical standards. Where an individual with a sound basal ganglia, or lower brain, sees right from wrong when the division is only a hairline, those individuals who have low emotion cannot see it when the line is as wide as the road. There are grades and shades of defect from a very slight deviation from normal to the outspoken moral defect. The latter, in spite of a good intellect, which enables him to become a leader, has no ethical sense and corrupts our public life wherever he is given important responsibilities. He himself does not realize the situation; he is color-blind so far as ethics are concerned. For that reason those who are ethically sound ought to drive these high-grade intellectual, but morally defective men, from public office and from public leadership. Such men frequently reach comparatively high places in our government, local, state and national, and we can identify them by their crass conduct when tested by ethical standards.

The double quality of the mind though of recent discovery as a mater of science has long been known and observed as a practical matter of worldly experience. "Out of the heart (the emotions) are the issues of life," we read in Proverbs 4-20. "As a man thinketh in his heart so he is," we find in Proverbs 23-7. The great Chinese philosopher, Confucius, said, "They who know the truth are not equal to them that love it." In other words, those who love the truth as well as know it have the ethical quality —the sound basal ganglia of science.

Tennyson, the poet of scientific insight, expressed the same thought in the lines:

> "A life that all the Muses decked
> With gifts of grace, that might express
> All-comprehensive tenderness,
> All-subtilizing intellect.

The great preacher, Phillips Brooks, conducted the services in Philadelphia when Lincoln's body was enroute to Springfield, Illinois, for burial. In his sermon he analyzed Lincoln's character with great truth and penetration, before the scientific facts regarding the human brain were known. Listen to this remarkable estimate of Lincoln, in the light of modern science:

"As to the moral and mental powers which distinguish him, all embraceable under the general description of clearness of truth, the most remarkable thing is the way in which they blend with one another, so that it is next to impossible to examine them in separation. A great many people have discussed very crudely

whether Abraham Lincoln was an intelligent man or not, as if intellect were a thing always of the same sort, which you could precipitate from the other constituents of man's nature and weight by itself, and compare by pounds and ounces in this man with another. The fact is, that in all the simplest characters that line between the mental and moral natures is always vague and indistinct. They run together, and in their best combinations you are unable to discriminate in the wisdom which is their result, how much is moral and how much is intellectual. You are unable to tell whether in the wise acts and words which issue from such a life there is more of the righteousness that comes from a clear conscience or of the sagacity that comes of a clear brain. * * * Not one of all the multitudes who stood and looked up to him for direction with such loving and implicit trust can tell you today whether the wise judgments that he gave came most from or strong head or a sound heart. If you ask them they are puzzled. There are men as good as he, but they do bad things. There are men as intelligent as he, but they do foolish things. In him goodness and intelligence combined and made their best result of wisdom. For perfect truth consists not merely in the right constituents of character, but in their right and intimate conjunction."

Phillips Brooks saw the importance of the emotional, the moral side of Lincoln, before the biologists made the discovery of the double character of the brain.

Lincoln's emotional tenderness is best illustrated by his letter to Mrs. Bixby:

"Dear Madam—

"I have been shown in the files of the war department a statement of the adjutant-general of Massachusetts that you are the mother of five sons who have died gloriously on the field of battle, I feel how weak and fruitless must be any words of mine which should attempt to beguile you from the grief of a loss so overwhelming. But I cannot refrain from tendering to you the consolation that may be found in the thanks of the republic they died to save. I pray that our Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.

"Yours very sincerely and respectfully,
"ABRAHAM LINCOLN."

This same quality is shown in his second inaugural:

"I am loath to close. We are not enemies, but friends. We

must not be enemies. Though passion may have strained, it must not break our bonds of affection. The mystic chords of memory stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land will yet swell the chorus of the union when again touched as surely they will be, by the better angels of our nature."

Lincoln in the most momentous crisis of the nation's life held true to his ideals of right and wrong, and never compromised with the expedient. He lived up to the poet Tennyson's ideal:

"And because right is right,
To follow right were wisdom,
In the scorn of consequence."

From the contemplation of Lincoln's character it is easy and natural to turn to the significance of the blood stream in our national life.

In the colonial times the hope for fulfilling the age-old dreams of philosophers, humanists and statesmen of a new world founded on justice and the rights of man on a virgin continent constituted the dominant thought and drive that selected out from the European stocks those who would sacrifice and toil for ideals. Of such were many of the colonists, and to this fact alone is due the miracle of building the republic.

For a long time thereafter migrating from the Old World to the New was a form of selection of the fit stocks of Europe, for those who chose to come were subjected to a perilous voyage lasting many weeks on the stormiest ocean in the world. Aside from the dangers of the sea the records show that there was a high percentage of mortality among immigrants, owing to the bad accommodations on the little, overcrowded ships. A great resolution was needed to embark on such a voyage—it meant cutting off forever all the old ties—trusting all to the opportunities of a new land.

How different this became with the advent of steamships, with short and relatively comfortable passage at very low rates. By that time America had become the traditional land of gold, of plenty, a place where everybody had a chance to get rich quickly. That was the main urge for leaving the motherland, not the lofty ideals and the sacrifices that drew the earlier immigrants and afforded a natural selection of the most daring and most idealistic.

In contrasting these two great impelling motives it must, however, be remembered that the older ideal did survive, and has endured to our times. Not all who have come to these shores in

the later decades were prompted mainly by the get-rich-quick motive. But on the whole the contrast stands and is valid.

Today the immigration problem is merged in a greater problem, the age-old problem of human fecundity. We boast of the extension of life by modern science, of reduced mortality, and these are factors which supplement the natural capacity for increase of population wherever living conditions are favorable. In America in the near future, as in Europe during the nineteenth century, as in China for many centuries, as in India under British rule and as in Java under Dutch rule, we shall have increases in population compared with which the nineteenth century trickle of immigration was a slight factor.

Sound immigration laws are necessary and will be, in order to keep the blood stream pure, but they are less important by far in the making of the future American than the matter of who, among those now on this continent, shall become parents of the countless millions to be born in the next few generations.

Wiggam has pointed out that one-fourth of each generation (which is one-eighth of all people born) produces one-half of the next. In the next generation this half produces three-fourths of the next, and ninety-eight per cent of the next, so that the quality of the original one-fourth, whether high or low, soon determines absolutely the quality of the whole.

Upon this factor depends the nation's future. A deep concern for that future must prompt us to effective measures of control. The task seems beyond us. And yet there are measures not difficult to take which will bring results in a generation. Among them are these things we can do.

We can by appreciating the biological factors involved educate our young people to the importance of proper mating.

We can restrict marriage so that the defective, the insane, and the criminal may not multiply.

MR. KNAUF: At this time I would like to move you, sir, that the address just delivered be published and that Judge Olson be made an honorary member of this association.

Mr. Casey seconded the motion, and it is was carried.

PRESIDENT YOUNG: We have here a Bismarck institution known as the Bismarck Male Quartet, which will sing at this time. While we are waiting for the quartet we will hear the report of the committee on legal education, Mr. J. A. Manley.

May I say before those who are leaving pass out of the door that we want to invite you to the meeting this evening. Chan-

cellor Brannon of Montana will speak on "The Relation of Law to Social Evolution."

MR. MANLY: Mr. President and gentlemen of the State Bar Association of North Dakota: I have prepared a brief report here which I will read. I think I will get it before the association better in that way.

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

The chairman of your committee on legal education and admission to the bar, deeming it impracticable to attempt to call the committee together for conference prior to this meeting, followed the course taken by the chairman of the 1924 committee, and some time ago addressed a letter to each of the other eight members of the committee, requesting that he answer the following questions.

(1) Should the committee recommend any changes in existing law relating to regulating admission to the bar?

(2) Do you favor conforming the state law in this particular to the recommendations of the American Bar Association?

(3) Do you believe it advisable to propose to the next legislature a higher standard of legal education?

The standards recommended by the American Bar association covering legal education and admission to the bar are:

(1) That every candidate for admission to the bar should present evidence of graduation from a law school complying with the following standards. (a) It shall require as a condition of admission at least two years study in a college. (b) It shall require its students to pursue a course of three years duration if they devote substantially all their working time to their studies, and a longer course equivalent in the number of working hours, if they devote only a part of the working time to their studies. (c) It shall provide an adequate library available for the use of students. (d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance with the whole student body.

(2) The American Bar association recommends that graduation from a law school should not confer the right to admission to the bar and that every candidate should be subjected to an examination by public authority to determine his fitness.

It will appear from an examination of these recommendations that they differ from the present law of North Dakota, only in requiring evidence of graduation from a law school of a certain standard as an absolute prerequisite to admission to the bar, and

the elimination of the option of study in a law office or under the direction of an attorney or judge of this state.

There has been considerable controversy over these recommendations of the American Bar association, both in the meeting of that association and in the meetings of the state bar associations of the several states. All this controversy points to a general trend of opinion among members of the profession favoring a higher standard of qualifications for admission to the bar. But it also showed a marked diversity of opinion in the profession as to what are the most essential things to be stressed in the education or preparation of the applicant for admission to the bar.

This diversity of opinion is evidenced by the answers of the members of this committee to the questions propounded by its chairman as above stated. The answers briefly summarized are as follows; Two members answered all questions in the affirmative, and two answered all in the negative. The other members favor a higher standard along the line expressed by one of its members in thes words: "Examinations for admission to the bar should be less formal and technical, more emphasis should be placed on the general size-up of the candidate and his ability to make good, also on his moral character, and knowledge of the ethics of the profession, and less stress should be laid on his having spent time in a law school, and more stress on his knowledge of English and logic, and actual procedure."

A majority of the members of the committee express the belief that it would be useless to propose to the next legislature a higher standard of legal education, unless this association should give such a measure its united support. While your committee values highly the advantage of a college education, it is not unmindful of the fact that no school or college can create a mite of wit or an ounce of brain; that these are natural gifts; that the profession has many a "bookfull blockhead, ignorantly read, with loads of learned lumber in his head," who would not make a lawyer if he graduated from all the colleges in the land and practiced until Gabriel blows his horn.

In conclusion, your committee, while favoring higher standards of qualification for admission to the bar, believes the raise should be made along the line of moral and ethical standards, and that more attention should be given to the natural fitness of the applicant for the work of the profession. For the reasons herein stated your committee would not at this time recommend any raise in the educational standards for admission to the bar.

Respectfully submitted,

JAMES A. MANLY,

Chairman.

PRESIDENT YOUNG: Is there a motion for its adoption?

MR. CASEY: I move the adoption of the report of the committee.

The motion was seconded and carried.

PRESIDENT YOUNG: We will now have the report of the States Attorneys association by Mr. Shafer.

MR. SHAFER: Mr. Chairman, members of the association: I am about to read a short report adopted by the conference of states attorneys held here yesterday and today touching criminal law and criminal procedure only. There are few recommendations and each is briefly stated in the best language we could command.

REPORT OF THE STATES ATTORNEYS ASSOCIATION

1. Revision of statutes defining various offenses relating to the banking business, including provisions relating to the crimes of embezzlement and misappropriation of funds, falsification of bank records, illegal and excess loans and other methods of fraudulent banking.

2. Amendment of the statute defining the crime of conspiracy to make one who conspires to commit a misdemeanor guilty of a misdemeanor and one who conspires to commit a felony guilty of a felony.

3. As an aid to the prevention of automobile thefts and the apprehension of automobile thieves in North Dakota, we recommend the adoption of the uniform motor vehicle registration act as presented to and sponsored by the American Bar association.

4. Amendment of the statute defining the crime of assault and battery to create another degree of the offense to cover aggravated cases of malicious assault and to increase the penalty in such cases to a maximum of one year in the county jail and a fine not exceeding five hundred dollars.

5. Amendment of the statute relating to peremptory challenges in criminal cases to give both the state and the defendant an equal number of such challenges.

6. As an aid in the investigation of criminal complaints we favor the adoption of a statute authorizing the issuance of subpeonas and examination of persons under oath prior to the arrest of a defendant, said subpeonas to be issued by a court or magistrate upon the application of the state's attorney and said examination to be conducted in the presence of said court or magistrate and said testimony to be inadmissable in evidence in the event of self incrimination should the witness be arrested.

7. The adoption of a statute repealing the present law providing for the so-called double-barreled affidavit of prejudice in criminal cases and providing that where an affidavit is filed against the judge and county that a new judge be called in to determine whether or not a change of venue should be granted.

8. Adoption of a statute definitely limiting the time in which appeal in criminal cases shall be completed and permitting the extension of such time by the supreme court only on application of the defendant with notice to the state.

9. Adoption of the statute permitting the state to take the testimony of prospective witnesses prior to the time of trial for the purpose of perpetuating and using such testimony in cases where the witnesses died or are byond the jurisdiction of the court when the trial takes place.

10. We favor the repeal of the present law prohibiting counsel for the state commenting on the failure of the defendant to testify.

11. Adoption of a statute authorizing a jury commission in each county to select persons qualified for jury service in lieu of the present method.

12. An amendment to the statutes relating to grand jury procedure to permit the presence of a court reporter to take testimony given before the grand jury.

13. We favor the repeal of the present statute setting aside indictments for failure to place the names of all witnesses thereon.

14. We favor the same procedure to be used in the endorsing of witnesses on an indictment as is used in the case of criminal informations.

15. Amendment of the statute relating to state's attorney's contingent fund to compel the county commissioners of each county to set aside annually for the use of the States attorneys a reasonable minimum fund to be fixed by law, based on the population of the respective counties.

16. Adoption of a statute requiring the defendant in misdemeanor cases to pay the reporter when such testimony is requested by the defendant to be reduced to writing.

17. We urge the enactment of a criminal syndicalism law similar to that now in force in the state of California.

18. The present compulsory school attendance law provides that the children of school age must be excused by the school board whenever the state's attorney determines that the work of such child is necessary to support a family. We feel that such

law should be amended to provide that a child may be excused from attendance by the county superintendent upon the recommendation of the school board.

Respectfuly submitted,
Committee on Legislation of State's Attorneys Conference.
H. F. HORNER, Chairman,
J. J. WEEKS,
H. E. JOHNSON,
C. N. COTTINGHAM,
C. F. KELSCH.

MR. SHAFFER: I move the adoption of this report.

MR. WINEMAN: I second the motion.

PRESIDENT YOUNG: Any remarks?

MR. NOSTDAL: What is the motion?

PRESIDENT YOUNG: The motion is to adopt the report submitted as the report of the States Attorneys association.

MR. WINEMAN: For the purpose of information, may I ask Mr. Shafer how many members are members of the regular committee of the association?

MR. SHAFER: You mean the committe of criminal law?

MR. ELLSWORTH: May I inquire about the effect of the adoption of this motion. Does it mean this association recommends the adoption in legislation of all the principles stated there?

PRESIDENT YOUNG: What is your opinion, Mr. Shafer?

MR. SHAFER: I would think it would approve the principles.

JUDGE ELLSWORTH: It is covering a pretty large field to do that. There is one section there which I am opposd to. It is to the effect that the association permit the repeal of the law that a defendant in a criminal case fails to testify. It seems to me that that law is in accord with our constitution and it could not be repealed without a violation of certain parts of the constitution.

MR. NOSTDAL: I don't believe we are ready to adopt all the recommendations of that committee. I move an amendment to the effect that the report be accepted and referred to the criminal law committee.

MR. WOOLEDGE: I second Mr. Nostdal's motion. I don't think we ought to adopt in full without consideration some report brought in by an organization which I don't think is a part of the State Bar association. (Laughter.)

MR. YOUNG: Will the secretary read the amendment. (Read.)

MR. OWENS: I am fully in sympathy with the attorney gen-

eral's report in view of the fact that he has been trying for years to get states attorneys to the state where it will take the load off the attorney general. We should consider it and there are some features that are particularly important. I don't see why Mr. Nostal advises, that we refer the report back to the committee.

MR. NOSTDAL: This report is not from any committee of this association.

PRESIDENT YOUNG: You refer to the committee on criminal law?

MR. OWENS: I thought that this was the report of the committee.

PRESIDENT YOUNG: Are we not quibbling over a little thing? Every member of the States Attorneys association is a member of this bar association and the chairman of the committee came here with reports from the states attorneys' committee, giving it a prestige greater than it would otherwise have.

MR. GOSS: It seems to me that this association is fortunate in having the report of the state's attorneys of this state brought before it. Those of us who have practiced law for years understand the necessity of certain amendments. Every time we come together as a body we hear discussions similar to the able paper that the president of this association brought before us and somewhat similar to the mighty paper that we have just listened to. The speaker said that we have gone too far to protect the individuals of society until we protect society. As the state's attorneys are the representatives of society, it seems to me that their recommendations should be heard and that we as individuals should give careful consideration to it and not say that no comments should be made that the guilty failed to take the stand. I think we should take the stand that the law and the lawyers are a generation of years behind society and when I hear that old doctrine that the states attorney should not be heard to comment because a man fails to take the stand it seems to me that it is harking back to past ages. (Applause.) As a trial judge years ago I ruled on evidence. It seems to me that the recommendations and substitutions are what we need and what we are looking for and it is doing a real benefit to this state for us to adopt them and accept them without quibbling.

MR. CAMPBELL: Mr. Chairman: Looking over this, you all know that when we come to a body of this character and a report of this character comes before it, we need an appropriate motion that those recommendations be considered separately, not generally, and we would have no objection to some of it. Here is a matter that comes to us in a number of recommendations. We

don't need to hark back to the old ages at all in the matter that we don't want to approve that report and everything that is in it. It is not that we don't want the state's attorneys to comment on the failure of the defendant to testify. There are other things that we don't want to swallow. It is true that the states attorneys are members of this association. Nevertheless, that body assembled there from the stand-point of prosecuting officials. As Mr. Owens says, he doesn't blame the attorney general—he wants to get the states attorneys so that they can handle a case and not bother his office. However, it is from the stand-point and only from the stand-point of states attorneys that they are proceeding there and those of the defense are not represented, and their opinions will differ. We are asked to pass on that report, not asked whether we favor legislation as to whether the state's attorney can comment on the failure of the defendant to testify. For instance, here is a proposition; there are others: We have a law that in the preliminary examination, we may have the testimony taken and reduced to writing at the expense of the state. That always has the result of establishing in the attorney the lack of freedom and the lack of fraud in the defense. Following that is the right of appeal when they are bound over for any cause and there is the right to appeal to the courts from habeas corpus. We are adopting that as well as that provision giving the states attorney power to comment on the failure of the defendant to testify. They want us to pass on it as a whole and if we are going to do that, we ought to consider whether this bar association wants to pass on each one of those. These things come up from that standpoint and because we are opposed to one or two, the suggestion is that we are opposed to the whole thing, when we are not.

This is the report of the states attorneys only. The side of the defense should be represented also. If we want to adopt it as a whole, we should sift it over. A large majority would not want it, and might have objections to matters in there. Therefore, I move that this be referred to a committee where all interests, not only the interests of the state, but also the interests of the defense, are represented.

MR. ELLSWORTH: There is a standing committee where matters coming before this association are referred and that is the committee on jurisprudence and law reform. Now, I did not fully understand the motion of Mr. Nostdal. Was it to refer the report of Mr. Shafer's committee to the committee on criminal law?

MR. NOSTEDAL: Mr. Shafer's report as to state's attorneys, not any committee.

JUDGE ELLSWORTH: I move to amend this way: that the re-

port made by Mr. Shafer (I notice in the program that the report on criminal law includes the report of the States Attorneys association)—I move to amend the motion made by Mr. Nostdal to read that the report made by Mr. Shafer be received and referred to the committee on jurisprudence and law reform.

MR. NOSTDAL: I understand that Mr. Shafer's report came from the States Attorney's association, and not from any committee of this association. Am I correct?

PRESIDENT YOUNG: Judge Ellsworth's motion is to refer this report to the committee on jurisprudence and law reform. That is all it means.

The motion was seconded by Mr. Manly.

Mr. Lanier rose to the point of order.

PRESIDENT YOUNG: What is your point of order?

MR. LANIER: My point is that the bar meeting is not a states attorneys' meeting and the discussion so far is unnecessary and the proper motion is for this to come to a committee of the bar association.

PRESIDENT YOUNG: We are wasting valuable time over a very fine point. Will some one move that the States Attorneys association be for the purpose of this convention be made a committee of the State Bar association.

MR. LOVELL: I move the motion suggested be considered as a substitute motion at this time.

Mr. Butts seconded the motion.

MR. WOOLEDGE: What is the motion?

PRESIDENT YOUNG: The substitute motion is that the report of Mr. Shafer be treated for the purpose of these motions as the report of the committee of this association.

MR. STUTSMAN: When did the committee make a report on this subject?

PRESIDENT YOUNG: Let us deal with the subject before us.

MR. STUTSMAN: If it means this report is to be left over for two years from now, I am opposed to it.

PRESIDENT YOUNG: Those in favor of the substitute motion say "Aye."

Motion carried.

MR. MCCURDY: The motion carried, I now move that this report be considered by this association one section at a time, and that they be taken up at this time.

Mr. Campbell seconded the motion.

JUDGE ELLSWORTH: We ought to vote on the amendment at this time.

PRESIDENT YOUNG: We adopted a substitute motion, as I understand it.

MR. FLETCHER: I move that we adjourn.

We have had a report and I am going to call for the quartette at this time.

MR. NOSTDAL: In order to clear up the situation I ask permission to withdraw my motion.

PRESIDENT YOUNG: The secretary has a statement with reference to this that he wishes to make that will throw light on the whole discussion.

SECRETARY WENZEL: With respect to the particular number 10 of this paper or report, this same matter was considered by the association in a report by William Green of Fargo two years ago and approved. The secretary was then instructed to have it printed and presented to the legislature. That was done.

MR. WOOLEDGE: The point I would make is this: Here is a report that comes to us from a meeting of the States Attorneys association. Their report may be all right, but there were no public defenders present. There were no attorneys present who were not states attorneys. It may be their minds are warped by virtue of their office, not intentionally, but unconsciously. I would like to have this report referred to the committee on law reform. As states attorneys they held their meeting. They were not acting as members of this association, but as holders of political office. I make a motion that this report be referred to a committee on law reform.

MR. YOUNG: Was that motion seconded and carried? The motion to consider this report section by section was made but not voted upon.

MR. GOSS: I move the adoption of the entire report and that as adopted it be put in the minutes. There are eighteen sections to be discussed and it seems that each section should be discussed.

JUDGE ELLSWORTH: I do not agree with Mr. Goss that we consider this section by section. Consequently, if we refer it to this committe, it will consider it section by section.

PRESIDENT YOUNG: We have the first question that must be passed on. The question before the house is on the motion made by Mr. McCurdy that we consider the report section by section.

Motion lost.

MR. WOOLEDGE: I move that this report be referred to the

committee on jurisprudence and law reform and that the committee report tomorrow to this convention.

PRESIDENT YOUNG: The motion is that the report be referred to the committee on jurisprudence and law reform to be reported on tomorrow.

MR. WINEMAN: It seems to me that this association should act on the proposals and not drop the questions that are listed. If the attorneys of the state of North Dakota are not in favor of law enforcement, the people of the state should know it. Now, it should be stated when this committee should report and not late in the afternoon.

MR. WOOLEDGE: I am here to insist that the time be decided upon by the chairman in view of what he has to consider tomorrow.

PRESIDENT YOUNG: They could be considered immediately after the report of the committee on judicial ethics.

All in favor of that motion that the report of the States Attorneys association be referred to the committee on law reform say "Aye."

Motion carried.

PRESIDENT YOUNG: The report of the committee on law enforcement is in the hands of the secretary. Mr. Burke is not here. May we have the report.

REPORT OF COMMITTEE ON LAW ENFORCEMENT

Your committee has had under consideration the very important question of law enforcement in the state of North Dakota. No definite program has been attempted during the past year, but your committee desires to make a few suggestions:

It the first place, it may be suggested that the term used is rather misleading. As a matter of fact, there is no known way to enforce a law. The term is used rather loosely, and the expression refers more properly to the enforcement of the penalty imposed for violations of the law. Laws are either obeyed or disobeyed. Your committee can conceive of no way of compelling persons to obey a law, who have deliberately made up their minds not to do so. This leads to the suggestion that perhaps a concerted effort should be made to bring before the people of the state a proper understanding of the duties of citizenship and the necessity for the observance of law, if our particular form and plan of government is to continue.

We have succeeded as a government just so far as the people as a whole have been willing to observe and obey voluntarily the

laws that have been enacted by the constituted authorities. President Coolidge very aptly said in one of his adresses that "Man does not make law, he discovers it." If the law or statute that is enacted is the result of a more or less general demand, and crystallizes the thought of the people as a whole, on the particular subject, the chances are that it will be generally observed and obeyed. If it is not, the chances are equally good that it will not be generally observed or obeyed.

It appears to your committee that the people as a whole have given very little thought or attention to the meaning of the term, self-government. The attempt on the part of vigorous and sometimes, perhaps, misguided reformers to impose upon the people as a whole, their pet and peculiar ideas with reference to human conduct, has resulted in placing upon the statute books many laws that do not meet the approval of the majority of the people. The responsibility of the legal profession with reference to the attitude of the people generally, with reference to these matters, is perhaps greater than we have realized, and a program might be carried out with comparatively little effort, that would bring before the people the general principles of government as we understand them, and the dangers that confront us as a nation by reason of the fact that so large a proportion of the people fail to give any thought to the subject.

It seems to us that duly elected and appointed legal representatives of the people, such as the judges of the different courts, states attorneys and city attorneys, might assist materially in carrying out such a program. For example, if the district judge, the county judge and the states attorney in each county should make it a practice to visit every community in the county at least once a year, and ask the people to gather for the purpose of discussing problems of government, it is quite likely that there would be a general response, and we might reasonably expect that by reason of holding such meetings the attitude of each community would be stimulated on the subject of law observance, and your committee recommends that such a program be carried out during the coming year.

Respectfully submitted,
C. S. BUCK,
Acting Chairman.

PRESIDENT YOUNG: What will we do with the report?

MR. WENZEL: On behalf of the committee I move that it be accepted and filed.

The motion was seconded and carried.

PRESIDENT YOUNG: At this time we shall hear from Dean

Cockerill who attended the meeting at Chicago. Dean Cockerill.

CONFERENCE OF BAR ASSOCIATION DELEGATES

The conference of bar association delegates met in the city of Washington on April 28. The meeting was held in the Assembly hall of the United States Chamber of Commerce. It was attended by 163 delegates and members of the excutive committee and general council of the American Bar Association. Forty states were represented. A morning and afternoon session was held.

The purpose of the meeting was to consider means for advancing the movement of statutory organization of the bars of the several states. This was the first time that a meeting had been called expressly for this purpose. In five previous meetings of the conference the proposition had been indorsed on principle and recommendations had been made to the several state bars.

The conference of delegates is a section of the American Bar Association. The accredited delegates are from the state and local bar associations throughout the country. These delegates choose the council and officers of the section. It is a forum for the discussion of matters which fall within the province of state and local bars. Its power is limited to the adoption of resolutions recommending action by constituent members of the association. The special meeting held in Washington on April 28 was a meeting called for the purpose of an extended survey of the situation and general discussion of the movement for state organization. It had no power to adopt a formula which would bind the constituent association or any future meeting of the conference. It therefore went no further than to resolve that the conference "recommends to the various state and local bar associations throughout the United States that compulsory, all inclusive incorporation of the bar is a matter that should primarily and properly be determined by each state in accordance with its own existing conditions and its own traditions."

North Dakota is one of the four states that already has an act incorporating the bar of the state. A review of the proceedings in Washington is of interest therefore only in so far as the discussion throws light on the wisdom or lack of wisdom of the action taken by the bar of the state of North Dakota.

The Hon. Charles Evans Hughes, chairman of this section of the American Bar association, presided. In his address he stated: "This meeting is called pursuant to recommendation contained in the report presented to the American Bar association at its meeting at Detroit in September last by the committee on state bar organizations." Chairman Charles E. Hughes antici-

pated the conflict in his opening address wherein he adopted a conciliatory tone:

"This project has been motivated by a keen sense of the solidarity of the profession of the law, an appreciation of its standards and ideals, and an earnest desire to promote the administration of justice.

"Whatever views may be entertained with respect to particular measures, all who are worthy of their position and privileges as members of the legal profession hold at heart these objects. We are justly proud, in this country, of the progress that has been made, notably in invention, in the application of science, in research, in the manifold activities, far more important than any political activities, which give us the progress of civilization which we like to think has been more highly advanced in this country than anywhere else, so far as the standards of living and the degree of comfort of our people are concerned.

"We also are gratified at the general success of the administration of justice. By that I mean we take pride in the peace, the stability, the good order of our communities, all of which rest upon the administration of justice.

"When, however, we come to consider the progress that has been made in relation to the administration of justice with that which has been achieved in these many endeavors to promote the well-being of society by the application of knowledge and scientific research, we can not fail to be impressed with the fact that with respect to justice, democracy's highest concern, we lag far behind. * * * *

"Because the entire bar cannot be energized, is it desirable to omit every sort of effort which may tend to energize it? The sense of privilege goes with the sense of responsibility. If you find that members of the bar are generally indifferent to their duties, are you going to succeed in interesting them in promoting a higher conception of their position as ministers of justice by absent treatment? Isn't your function that of injectors of a wholesome serum into diseased bodies? Is it your desire to accomplish something by dealing with them from the outside, or to create a better sense of solidarity in professional relations? * * *

"This can never be achieved in any state by a divided bar, in the face of controversy. We are not here for controversy. We are here to exchange views as men who desire the same objects and wish to confer and take counsel together. * * * *

"The dream that we have, the vision we have—don't let that fail—of lawyers together feeling that they are members of a

profession, feeling that the interests of the profession are not the interests of a minority, but are the interests of all, feeling a duty to establish and maintain standards and willing to discuss with anybody the way to do it, but intent on getting it done." * * *

The chairman announced in view of the fact that no formal program has been prepared he would first call for the report from the committee on state bar organizations; then reports from state bars of the several states in which the bar of the state has been officially organized under legislative enactment; then reports from state bar associations where the subject matter has been acted upon or is still under discussion; then reports from other associations of the bar, and then the general discussion.

The chairman first read, however, a letter from Hon. William Howard Taft, chief justice of the supreme court of the United States.

The chairman then called upon Judge Clarence N. Goodwin, chairman of the committee on state bar organizations, for the committee's report. This report is printed in full in Vol. 10, page 20, Journal of the American Judicature Society, June issue for 1926; also the greater part of this report is to be found in the May, 1926, number of the American Bar Association Journal, Vol. 12 at page 326.

This report favors an inclusive bar and urges that self government is needed to place the American Bar on the level with bars of other nations. This position is emphasized by the following excerpt from the report:

"The equally unfortunate fact remains that among those outside the bar associations—and they comprise at lease two-thirds of the bar—there are many who are definitely in need of the inspiration and restraint which comes from close professional fellowship. We would not for one moment reflect upon this outside group as a whole. It is a group which in the main is fundamentally honest and devoted to the ideals of the profession. We believe in the American bar; we believe in its honesty and integrity as a whole. We believe that, man for man, there is not a group in all the world more devoted to its professional ideals, more loyal to its conception of professional duty, more willing to make sacrifices for the public. If this were not so, hope for an ultimately efficient, satisfactory and impartial administration of justice would be gone, for if the great mass of our profession were not sound at heart there would be no power in all the world to restrain or redeem it.

"We turn to the experience of the bar of England, the bar of Ireland, the bar of Canada, and the bar of France. We cannot

believe that the men of these countries who seek admission to their bars are sounder in morals, more devoted to a sense of duty, or more intelligent than those who seek admission to our own; but the fact remains that those bars maintain and enforce their standards; ours do not. The one distinguishing difference in this regard between those bars and our own is that those bars are self-governed and ours are not. The counsellor, or the advocate, or the barrister who is admitted to one of those bars becomes not merely a lawyer entitled to go into court and to practice law, but he becomes a member of an institution, he becomes a fellow of the profession, he is given a voice in its government, he has a high privilege of performing a great and essential public duty, but he knows that with that privilege and the privilege of fellowship in that institution go duties to the institution, duties to the public and duties to the client, which that instituion will see are performed." * * * *

The order of business as stated by the chairman called first for report by states which had had adopted bar organization statutes. Alabama was represented by two delegates, Henry Upons Sims and Edmund Beckwith. Mr. Sims stated that the Alabama Medical Society was the most completely organized society in America and perhaps in the world and that this precedent made it easy for the bar to secure action by the Alabama legislature. He said:

"We accomplished two things: * * * First, we are put in absolute control of admission to the bar, and we are put in absolute control of disbarment. * * * We previously had the power, through our council, to prosecute for disbarment and to require any prosecuting officer in any county to prosecute, but the respondent had the right to a jury trial. Under our new act he has not the right to a jury trial. Our own council of the bar tries him, and if it decides to disbar him, it disbars him, subject to his right to appeal to the supreme court, because the supreme court must necessarily strike him from the rolls. We feel that that will be perfunctory."

For ten years previously there had been a commission appointed by the governor to admit to practice. It was insisted that this right should be transferred to the official state bar, and it was done with the proviso that the provisions for admission should stand until changed by the state bar and approved by the supreme court. It is expected that approval will be perfunctory, when any change is proposed. "We are progressing under our act as we expected to. We had only one fear, that taking the administration of the bar out of the hands of the old crowd, the benevolent autocracy, it might get into other hands because the

council might run the risk of control by insurgents, or something of that kind. I am glad to be able to report that the benevolent autocracy continues in possession under the new law. Therefore I think we are safe." Mr. Sims also reported that the Birmingham Bar association continues to exist and function as a voluntary body. "We have our property, our library, and membership in it is absolutely voluntary. It doesn't interfere in the slightest with our membership in the state bar." * * *

These remarks of Mr. Sims were supplemented by Mr. Beckwith, who stated:

"It seems to me that the two alternatives presented to this conference become relatively simple: shall we have minority organization or shall we have a majority of the bar in control? I use those two words deliberately. We shall never have control till we have a majority of the bar and the experience of fifty years has demonstrated that we shall never have that majority under voluntary organization. * * * The next question is also simple; is there anything dangerous in letting the rest of the lawyers in where we are? Every lawyer necessarily believes in the fundamental righteous sense of justice of the ordinary man, and no lawyer ever went into court without a hope and a definite belief that by human means and at the hands of ordinary men he was going to get justice sooner or later. And yet it is suggested here and there that if we turn a state bar association over, not alone to ordinary men at whose hands we must seek justice every day, but turn it over to lawyers themselves, trained in the science of justice, we shall immediately submerge all of our institutions and lose the whole of our machinery of justice. We couldn't believe that any such thing would happen." * * *

North Dakota was represented by O. P. Cockerill who reviewed the act passed by the legislature in 1921 and as it was amended in 1923. The members of this bar are familiar with those acts and it is unnecessary to state their provisions at all in this report. He further stated to the conference, however, that the state bar of North Dakota has taken an interest in attending meetings, something that it had not done before the organization of the state bar, and that the state bar organization had not interfered at all with any local bar associations. It has put energy into and helped to solidify and unify the bar of North Dakota He further stated that he had interviewed practitioners of long standing of the bar of North Dakota and that they were united in their praise of the benefits derived through state organization.

There was no respresentative present of the official state bar of Idaho, where the first act was held invalid. The second act passed under which the bar adopted, with the approval of the

supreme court, rules concerning the management of the bar, rules for admission, rules for conduct and rules for discipline.

New Mexico was then called, it being the only other state having adopted an act incorporating the bar. United States Senator S. G. Bratton reported for New Mexico. He observed that "the members of the bar, with rare exception, supported the new law and believe it will facilitate higher standards, purer ethics and will bring about more confidence in members of the bar and a more wholesome respect for the profession." The act protects both as to discipline and admission by vesting in the supreme court power to modify or annul any rule on either subject, and guarantees a recourse to judicial authority. Senator Bratton concluded his remarks by saying: "Urge upon members of the bar in other states to adopt this method of securing better results, thereby accomplishing in a uniform way some of the steps of progress we all desire so much."

The New Mexico act varies somewhat in detail from the North Dakota act, but in its general broad working principles follows very closely our own statute under which our bar is organized.

California was the first state to report of the states that had considered incorporation, but not having at present a statute incorporating the bar. This report was given by Joseph J. Webb, chairman of the committee of the California State Bar association, charged with drafting a bar act and securing its adoption. He reported that the subject was first discussed in 1917 and in 1920 a committee was created. This committee prepared a bill and this bill was introduced in the California legislature in 1921 but not passed. It was agreed, he said, that without legal authority the existing voluntary association could not discharge their public duties. A letter from Mr. Justice Richards of the supreme court of California was read wherein he said: "The courts should not be called upon to pass upon the qualifications for membership in the bar. The bar itself should determine the qualifications of its members and should, by the operation of its regulations, cause membership in the bar to cease when the character and qualifications of a member fail to attain the standards set by itself." A resolution was adopted favoring the plan by the judicial section and every member of the supreme court went on record as approving the idea on principle. "The underlying principle of the campaign was unremitting effort, toil and work. * * * We left nothing to chance insofar as human foresight could anticipate." * * *

Their efforts finally secured the adoption of a strong act with only eleven dissenting votes in the legislature, but the gov-

ernor vetoed it. He concluded, however, by saying that "The proper administration of justice rests wholly upon the bar. When you consider the importance of this question you must, and I believe you will, press forward until all the states of the union realize that a self-governing bar, such as is provided for in the Alabama act and California bill, is the one way of accomplishing the desired results."

Progress in Other States

Reports were made at the meeting by delegates from various states. The Ohio, Minnesota and Kansas movements which made a speedy start met with reversals. Delegates from these states, however, insisted that the work would go forward. The delegate from Ohio reported that the state association had assumed the work of building of local associations. Minnesota was proposing to follow in the steps of Washington, organizing local associations and federating them with state association with a unitary membership.

Reports came from delegates from Georgia, Iowa, Kentucky, Maryland, Rhode Island, Utah, Virginia and Tennessee, where little progress had been made, but that the idea of state incorporating had already attracted the attention of the voluntary bar of the state. It has already been stated that the Washington bar is almost inclusive and Chief Justice Parker of the supreme court of that state said that an act could doubtless be obtained incorporating the bar of the state at any time that the association there realizes the need for one. Illinois reported that through district federation of local associations the whole bar outside of Cook county is being energized and two-thirds of the lawyers are enrolled. A similar proportion is enrolled in the Chicago Bar association which cooperates with Cook county and the state bar.

The principal opposition, however, in the conference came from delegates from New York and Illinois. In fact, the entire afternoon session was given over largely to the delegates from New York, Mr. Guthrie representing the association of the bar of the city of New York and Mr. Louis Marshall, president of the New York County Lawyers association. Both are unalterably opposed to state organization in New York at present, and are particularly opposed to the Gibbs bill as introduced in the New York legislature in March, 1925.

Mr. Julius Henry Cohen, representative of the New York local association, replied to the arguments of Mr. Guthrie and Mr. Marshall. The time limit of six minutes for each speaker was waived at this time and these gentlemen went to it. Mr. Guthrie said: "Now we in New York have reached the conclusion that

it would be extremely dangerous to vest the control of the future of the bar of the state of New York, its standards of service, and its ethics, in the hands of a body now wholly outside the bar associations, who have never shown the slightest interest in the profession, who have never shown the slightest desire for cooperation or any spirit of fraternity, that it would be extrmely dangerous to vest in that majority the control of the bar with authority to speak for the whole. The effect would be by any such compulsory incorporation that 19,000 lawyers would be added to the present group of 4,200 and, constituted as humanity is, it would only be a short time before this majority took control. It would be a short time before this body would make the state bar association and its local divisions the footballs of politics, for they would have patronage and funds to control and the power to speak authoritatively for what has heretofore been a great bar." At a recent meeting the vote stood 358 to 33 against compulsory incorporation. The Gibbs bill, around which the discussion has turned of late, does not create a self-governing bar. It does not effect the present status of admission and disbarment. Letters supporting the speaker from Mr. Milburn and Mr. Wickershal were read. Democracy does not require that in such organizations as the bar and the medical profession the fit and the unfit must be admitted without distinction and without selection.

"Annually hundreds of men are being admitted to the bar who are able to pass the examinations, against whom nothing can be found, and yet, who, we are all convinced, ought not to be entitled to practice law and ought not to be able to exercise the privileges of the profession. We have a grave danger. * * * You cannot solve that problem offhand or automatically by any form of legislation. * * *

"I therefore urge and move the adoption of the resolution, that we recognize that this is essentially a local question, having its repercussion, of course, as all local questions have, throughout the United States, but fundamentally and primarily a question to be determined by each state, and that you ought not to go any further."

Mr. Louis Marshall continued the argument against state organization. He did not agree, however, with Mr. Guthrie that an influx of lawyers who lack all the traditions of the Anglo-Saxon bar constitute a menace. His argument went largely in the direction of pointing out the alleged feebleness of state associations as compared with the two strong city bodies especially in committee work. He presumed that an inclusive state bar would destroy the work so laboriously built up and would be unable to create new machinery to accomplish desired results. Mr.

Golden of the Queens County association supported the two preceding speakers. He fearing that our association, which has such splendid traditions, is going to be wiped out and we be given something which cannot possibly function.

Mr. Julius Henry Cohen of New York replied to the arguments just presented by the three members from New York. He asserted that proponents of the inclusive statutory bar presented a philosophy, "It is this: when you and I were admitted to the bar, we took an office, not merely as officers of the court, not merely to perform jobs for clients, but we took a position which put us in relationship with every other lawyer in our state. Whatever I may say about the social qualifications of any member of the bar, or about his character, when he turns up representing a client I must receive him in my office if he has a personal communication to make to me. I must meet him in the court. * * * We have accepted the philosophy in almost every utterance that is made by every distinguished lawyer that the bar as a whole of each state has certain public duties to perform through association, and every lawyer is under obligation to aid in the performance of those duties.

"This is not creating a new status. It is accepting a status which we entered into by virtue of our admission to the bar and merely endeavoring in our crude way to create the machinery which will enable us to function. Is that philosophy accepted by the bar of the country at the present time? It is not. * * *

"If that philosophy be true it is no answer to say that it will fail of operation, because who can say that it will fail when you have taught every member of the bar that his duty is to function in collaboration with every one of his brothers as well as with the court and with clients.

"If that philosophy is unsound, we are all out of court and there is no further discussion. But the philosophy is sound and the more you men think about it, the more you read of the history of the bar, the more you will realize that the bar already exists as an inclusive organization, but has not got the machinery with which to function."

Judge Clarence N. Goodwin, chairman of the committee of state bar organization, then took the floor to report on state organization. He said: "A number of you have been saying, 'We do not want these men brought into association with us.' Well, they are in association with you, they are members of your profession. It isn't a matter of guilt. It isn't a matter of trade union. If there is anything partaking of a guild or trade union it is the voluntary bar and not the officially organized bar. With-

out the voluntary bar associations we would be in a far worse condition that we are today, but the voluntary bar associations have not solved the question. * * * I believe that as discussion goes on we will find some way, even in New York, to recognize our duty of fraternity to all those who are in the profession and who are our brothers. * * * You will never solve this problem until you recognize the fact that the man admitted to the bar becomes your professional brother and that there is thus a relation officially established."

Mr. Guthrie's remarks merely summarized the written report submitted by delegates from the Association of the Bar of the City of New York. These written arguments consisting of thirty-nine printed pages are too lengthy to be even summarized here. Since the meeting held in Washington on April 28, 1926, the bar of the United States has been circularized by a second statement entitled "A Review of the Proposed Compulsory Incorporation of the Bar of the State of New York and the Gibbs' Bill" by William D. Guthrie, president of the association. The thoroughness in which this statement presents the New York view is a credit to its author. In the conclusion on page forty-six of said statement Mr. Guthrie says: "I am convinced that the proposed experiment of an all-inclusive compulsory bar incorporation would be altogether too speculative and dangerous for the state of New York with its immense and heterogeneous population, and that there are no conditions now existing in the city of New York or elsewhere throughout the state that call for or which would justify any such innovation." With due respect to the integrity and intelligence and the care with which Mr. Guthrie has presented the case it seems that he has wholly failed to answer the position taken by Judge Goodwin, chairman of the committee on state bar organization. Mr. Guthrie takes the position of the undergraduate who believes that his fraternity comes first, that the sorority of his best girl comes second, and that the interest of his university is a poor third. Mr. Guthrie insists that the standing of the bar as a profession is in the hands of a few self-selected superior lawyers of the city of New York and that this of necessity is, and must continue to be, the situation. This wholly ignores the fact that every person admitted to the practice of law in the state of New York or in any other state upon his admission becomes a member of the bar. His conduct after his admission reflects favorably or unfavorably upon the entire profession whether he joins a voluntary bar association or is forced into a bar association by state incorporation. It is this fact which the delegates from New York totally ignore and makes their argument unconvincing.

The position taken by the New York delegates is not a new or a novel one. It is a continuation of the age long contention that a few well selected and superior individuals can best govern and point the way for the many. The question presented by their contention is shall the requirements for admission, the ethical standards of the profession, be fixed by the few or by the entire profession acting as a unit through an organization representing the entire body of practitioners? The public in criticizing the standards of the profession, or criticizing the action of a member of the legal profession never inquire as to whether the particular individual they criticize is a member or not a member of a local organization. If he is admitted to the practice they hold the profession responsible for his conduct. Can this individual's conduct be more closely scrutinized by a bar association of which he is a member and in whose deliberations he must take part actually or theoretically or by a bar organization of which he is not a member? It would seem that the asking of the question answers it. Any organization can better control its members and has a greater right to control them than it has to control those that are not and cannot become members.

Alfred Z. Reed, staff member of the Carnegie Foundation for the Advancement of Teaching, says that inadequate bar admission requirements and the lower educational requirements for the admission to the bar as compared with the admission requirements for practicing physician is due largely to lack of organization of the American Bar. He says, "One conspicuous difference between the two professions was the relative lack of effective organization among lawyers. The American Medical Association had already developed an effective system of professional supervision over medical schools and medical licensing authorities. Its extensive membership made possible the publication of a weekly journal, through which the facts could be published to the profession at large. It also made possible the establishment of a council on medical education, with compensated executive officers, for the ascertainment of these facts." Nothing of this sort existed in the American Bar Association. Mr. Reed ascribes the higher and more uniform requirements for the medical profession to be due largely to the fact of the better and superior organization of the physicians, both nationally and in the various states.

The argument that annual tax or license is unconstitutional seems unsound. Every state has an automobile license, peddler's license, dog license, and other annual licenses as a prerequisite for the exercise of certain rights. It would seem that there is no reason why a tax to license the lawyer and check up the profession annualy is unconstitutional. He is charged an initiatory fee

which must be a reasonable one and it seems hard to distinguish this from an annual fee. The constitutions of most states would of course limit the legislature to a reasonable fee.

The argument that the local bar association of New York has immense properties which it would be unfair to require them to turn over to such state organization has to do only with the Gibbs bill or a certain particular act. It was not the spirit of the conference that these local associations be compelled to surrender their property. This was aptly stated by Chairman Hughes when he said: "If I may be allowed to say, in this spirit in which I hope we will all share in entering upon this discussion, I should like to see it make a provision in any bill that provides for state organization, that no voluntary association should be compelled to join it or should be affected in any way by any activity of the state bar in its property, interests, or organization, without the unanimous consent of its members. I should like to see our city organizations and our county organizations, that fear that this effort may in some way prejudice them, relieved of that apprehension by some assurance that nothing will be done prejudicial to them.

"I speak, of course, from the standpoint of one who was for many years identified with the Bar Association of the City of New York, and with the County Lawyers Association of the County of New York, and I know well the splendid work that has been done.

"Take the city association, for example, starting at a time of low civic interest, with tremendous aggregations of plunderers in charge of New York, and represented by the leaders of the bar in cleaning up that city in the time of the Tweed regime. I think the history of New York will never be written without registering the sense of obligation of the city of New York, not merely the profession of the law of the city of New York, to the Association of the Bar. It possesses a great building, a wonderful library, important privileges. It ought not to be impaired or have any one indulge a reasonable fear of impairment in its interest.

"Similarly, the county organization in New York, which is on a very broad platform by which almost anybody can become a member on payment of a relatively small fee, has done an important work. It is contemplating the erection of a building. It naturally is apprehensive lest it should suddenly find itself removed from its sphere and put into an organization which its council does not want. It ought to be disabused of that fear." * * *

The alleged shortcomings of the present bar association as

stated in the argument of the proponents of the bill is somewhat beside the point. The medical association and any bar association, whether state or national, voluntary or compulsory, must always fall short of its highest aims and ambitions, but it is submitted that the experience and intellectual attainments of each and every member of the legal profession in any state of the union is sufficient to enable that member to intelligently participate in the affairs of that organization and that having taken part in its deliberations will have a higher regard for its edicts and will endeavor in the practice of his profession to act more nearly in accordance with its standards.

Mr. Herbert Harley, secretary of bar association delegates, has a complete report of the proceedings of the conference in the American Bar Association for May, 1926.

FOURTH ANNUAL MEETING OF THE AMERICAN LAW INSTITUTE

The American Law Institute held its fourth annual meeting at Washington, April 29, 30, and May 1, 1926. The six sessions were held in the assembly hall of the United States Chamber of Commerce building. There were about three hundred delegates present and took an active interest in the work. Delegates present consisted of the chief justice of the United States Supreme Court, a number of chief justices of the various supreme courts of the states, the federal judges, practitioners and members of the teaching profession. Members of each branch of the three branches of the profession seemed equally interested in the proceedings. Sessions were well attended and lively discussions marked each session.

Your committee of the American Law Institute for 1925 gave a detailed and complete report of the third annual meeting of the institute. This report is found in the proceedings of the State Bar Association of North Dakota held at Fargo, September 9 and 10, 1925, page 57 to 68 inclusive. The fourth annual meeting was very similar in character and composition to the third annual meeting held last year so it is not deemed advisable to repeat what is given there nor to make this report unduly long as it merely supplements the preceding report.

Bar's Aid Is Enlisted

If this session differed at all from the preceding session it was in the fact that the bar in general and particularly the practitioners took an added and increased interest in the proceedings at the fourth annual session. This is shown not only by their leaving their practice and traveling across the country to Wash-

ington, but is further shown by the fact that these men were willing not only to sacrifice their time from their offices but to pay their own expenses. It was further shown also by the fact that fourteen committees were appointed to cooperate with the institute and secretary. A number of state bar associations, following plans suggested by the Illinois organization, have distributed over three thousand copies of the tentative drafts of restatements already printed to members applying for them. These drafts were furnished the secretaries at a price which merely covered the cost of printing and distribution.

Our own competent secretary and treasurer, R. E. Wenzel, has shown his interest in having these restatements of the law distributed by making an announcement in Bar Briefs, Vol. 2, No. 3, page 7, for February, 1926, as follows:

"The American Law Institute now has available for distribution the following restatements of the law: Contracts, Restatement No 1 and Restatement No. 2; Conflicts of Laws, Restatement No. 1 and Restatement No. 2; Torts, Restatement No. 1 and Restatement No. 2; Agency, Restatement No. 1.

"While these restatements have been written by eminent authorities in the subjects covered, the institute desires the critical judgment of the profession generally upon them before they are given final and official sanction. For this reason tentative drafts have been made available to members of the bar and with these are furnished blank forms for criticisms and suggestions. The State Bar association can procure these drafts in lots of twenty-five for each restatement, at the average price of fifty cents a copy. * * * All members of the bar are urged to secure one or more of these restatements and may do so by writing to R. E. Wenzel, secretary, at Bismarck, specifying the restatements desired and remitting the sum of fifty cents for each copy ordered. Judge Geo. M. McKenna, chairman of the committee for this state, urges the members of the bar to cooperate in this work."

That this notice is timely and urgent is shown by the fact that both President Wickersham, in his address at the opening of the session, and Director Lewis, is his report to the institute, urge the bar to avail themselves of this opportunity to familiarize themselves with the undertaking. They both noted that teachers of law are beginning to make use in the class rooms of these tentative drafts in order to test them and to help the work of the institute. It will thus be seen that it is the purpose of the institute to have these restatements tested in every available way before they reach their final form. This should have a double

effect. It should not only make the work of the institute better but it should have the desired effect of having the bar familiar with these restatements. So when they are completed the bar may begin at once to use them and submit them to the courts where they will be tested in the actual practice of the law and it is hoped the courts may find them a help if not determinative in the decision of cases.

Restatements Presented and Discussed

In Vol. 12, No. 5, page 299 of the American Bar Association Journal for May, 1926, the restatements presented and discussed at the meeting together with the name of the reporter and his advisers are given as follows:

"Restatement No. 2 on Contracts, presented at this meeting, contained fifty-six sections with comment, and covered the subjects of Consideration, Formation of Formal Contracts and Joint Contractual Obligations and Rights. It was prepared by the reporter, Samuel Williston, with the aid of the following advisers: Arthur L. Corbin, Dudley O. McGovney, Herman Oliphant, William H. Page and William E. McCurdy, assistant. Restatement No. 2 on Conflict of Laws contained ninety-two sections, with comment, and was prepared by Joseph H. Beale, the reporter, and Austin W. Scott, associate reporter, with the aid of the following advisers: Harry A. Bigelow, Joseph W. Bingham, John G. Buchanan, Amistead M. Dobie, Frederick F. Faville, Herbert F. Goodrich, Monte M. Lemann, Ernest G. Lorenzen, William E. Mikell and William H. Page. It was divided into the following parts: Introduction, Jurisdiction and Jurisdiction of Courts. Restatement No. 2 of the Law of Torts contained thirty sections with comment, and was prepared by Francis H. Bohlen, reporter, with the aid of the following advisers: Herbert F. Goodrich, Charles M. Hepburn, Warren A. Seavey, Young B. Smith and Edward S. Thurston. Restatement No. 1 on Agency contained 140 pages and 155 sections with comment, and was the work of Floyd R. Mechem, reporter, with the aid of the following advisers: Edwin R. Keedy, Richard R. Powell, Harry S. Richards and Warren Seavey. The restatement was subdivided as follows: Definitions and Distinctions; Acts for Which Agency May Be Created; Competency of Parties; Appointment of Agents and Servants and the Evidence Thereof; Appointment of Agents by Other Agents and the Delegation of Authority; Ratification."

As has been stated the fourth annual meeting was conducted in the same manner as was the third. President Wickersham was present at this meeting and presided the greater part of the time

of each and every session. When called in conference or when he was compelled to leave the chair Judge Cardozo of the New York Court of Appeals and vice-president of the session, presided.

The actual work done at these sessions is perhaps best shown by giving in detail the discussion on Section 27, Contracts, had at the meeting last year. Judge Wickersham not being present, Judge Cardozo presided at the third session. The discussion, which is reported below, opens with Judge Cardozo asking if there is any discussion under certain sections.

JUDGE CARDOZO: Anything else under section 24?

"I call section 25. Section 26. Section 27.

MR. LEWIS: Mr. President,we have received a criticism from Mr. Roland R. Foulke that an auctioneer invites an offer even when he announces that he will sell without reserve. It would seem to me advisable if Mr. Foulke is here to state his point of view.

JUDGE CARDOZO: If Mr. Foulke is here we will be glad to hear him.

Section 27. At an auction, the auctioneer invites offers from successive bidders unless, by announcing that the sale is without reserve or by other means, he indicates that he is making an offer to sell at any price bid by the highest bidder."

ARTHUR L. CORBIN (Connecticut): Mr. Chairman, it seems to me that the point is well taken, that is, that the statement as it now reads would seem to lead us to the conclusion that the auctioneer does not invite an offer if he does announce that the sale is without reverse.

MR. WILLISTON: I think that was charged by the council to this form. It does mean just what you have suggested, the idea being that in that particular case the auctioneer is the offeror. Whether that is a fair conclusion or not I think it is open to question.

MR. CORBIN: Does he not also invite offers?

MR. WILLISTON: A man who makes an offer I do not suppose can fairly be said to invite offers. You distinguish, do you not, between a man who himself makes an offer and one who invites an offer?

MR. CORBIN: He can do both at once. That is the point, as I understand it.

MR. WILLISTON: I do not know whether he can, if what he invites is bids, and if he himself has made an offer to sell to the

highest bidder. Any bid is then necessarily an acceptance, conditional of course, on no higher bid being made. The proper designation of a bid under these circumstances I should say is an acceptance and not an offer, should not you?

MR. CORBIN: Yes, unless there were terms that were not consistent with the offer of the auctioneer.

MR. WILLISTON: Can the auctioneer be regarded as inviting a bid in such terms?

JOHN G. BUCHANAN (Pennsylvania): Would not the idea be brought out better by inserting the word "merely" before "invites" in the first line?

LEARNED HAND (New York): In respect to section 26 and some of the sections that precede that, Mr. Willis I think, suggested that the word "agreement" might be used in brackets. I think Mr. Williston said he did not see why that was desirable. It occurs to me that as agreement is defined in section 3—I think it is, is it not?—whether it was not desirable to use the word so defined when the idea carries the meaning, instead of repeating the idea itself and not making use of the definition, that is, why not use the word "agreement," why should not that be substituted, as it apparently was, I suppose, intended when it was defined? That occurs in section 26. Perhaps there is some good reason for not doing it, but it seems to me it would be a much less cumbersome phase than to keep repeating the expression "mutual expressions of assent."

JUDGE CARDOZO: If there is nothing else under 27 I will call section 28. Is there anything under that? Section 29? Section 30? Section 31? Section 32? Section 33? Section 34? Section 35?

(Proceedings, American Law Institute, Vol. III, pages 194, 195 and 196.)

The restatements presented and discussed were as already stated, four in number, covering courses in Contracts, Conflict of Laws, Torts, and Agency. At this session, as at all former sessions, when his subject was taken up each reporter went to the platform prepared answer questions, discuss objections, note suggestions for future consideration, and justify the tentative draft, section by section. It is not possible here, nor is it desirable, to report the discussions of these various restatements section by section. It was interesting, however, to be present and note the points raised under each section, and the earnestness and sincerity with which these points were brought forward and above all the number of men taking part in these discussions. One section might be questioned by Chief Justice Rugg

of Massachusetts while the next section might be criticized by Chief Justice Parker of the state of Washington.

This serious work took up the greater part of each of the six sessions.

Two incidents of the meeting, however, deserve special mention. During the first session and shortly after Hon. Geo. W. Wickersham had completed his address, a man that represents the best and greatest that there is in the legal profession today in the United States, entered the hall where the institute was in session and quietly and apparently unobserved took his seat in the rear of the hall. President Wickersham saw him, however, and during the first pause in the discussion called the Hon. Elihu Root forward to address the institute. The institute was on its feet and cheered the veteran leader of the bar as he slowly walked down the aisle. He addressed the institute very briefly. He said in part:

"Now, it seems to me that the bar—which was so scattered and had so little cohesion, so little common sentiment—that the bar is getting itself into that kind of organization, with a common purpose, which is going immensely to increase its powers, both for the specific field of work we are undertaking here, and, hereafter, for the accomplishment of all the things necessary for the maintenance of our system of law, our free institutions and our order and liberty.

"I think the bearing of this institute goes far beyond the restatement we are making here. I think it is the inauguration in America of a bar as distinguished from a multitude of bars. I think we are taking the early steps in the creation of a great power in the preservation of all we hold dearest and most valuable for our country, and I feel greately cheered and pleased beyond expression at watching carefully the progress in this work, both from you members of this institute and the members of the bar outside of the institute, in all parts of the country."

The second incident occurred on the second day of the session. Chief Justice Taft entered the hall and was enthusiastically received. The president called him to the platform. He spoke briefly as follows:

"I came just to register the presence of our court and to have you know that we are humbly waiting for your assistance as the body which probably needs that assistance most; merely to greet you in your good work, to felicitate you upon your very effective organization and plan of work; to felicitate you on the fact that you have here and have had here to give you his blessing and his real assistance, not only the leader, but the Nestor and the Ulysses of the American bar.

"There is no man in this country who, in a professional or other way, is more fertile in expedients for the good of the country and the good of the work which the bar may do than Elihu Root."

You should not get the impression, however, that the entire work of the institute is done at these annual meetings. These meetings are called merely for the purpose of discussion, criticism and suggestions from all members in attendance. The intensive work has been done during the year at various meetings of the different councils appointed to make various restatements. This work done by the various council is best told in the words of President Wickersham:

"In our own chosen field, the year past has been one of great activity, as you will readily perceive when you come to consider the volume of material which has been sent out for your consideration in advance of this meeting and which you will be invited to discuss. If, as Judge Cardozo said at the last annual meeting, there had then been 'at least a brave beginning,' of our undertaking, this year it may truthfully be said there has been a notable advance. * * *

"When the council assembled on December 16th last for a three-day session, it found itself confronted with an undertaking of no small magnitude, and of no easy despatch, in the consideration of the fruits of the labors of the scholars who for a twelve-month period previously had been toiling in the field assigned to them by the council's directions. During those three days, however, the members of the council discussed with such fullness as time would permit the report of the fields of contracts, torts, agency, and conflict of laws, respectively, and finally, in order that the work of the reporters and their advisers might not unduly suffer from criticism of the moment, the council referred each one of the reports under consideration back to the reporter for discussion with a sub-committee of three members of the council, with instructions to report to the executive committee, which was authorized to transmit the tentative drafts to the members of the institute for consideration at this annual meeting, with a view to suggestion and criticism by them. Accordingly, a committee on torts was named, composed of the Honorable George W. Wheeler, as chairman, and Messrs. Owen J. Roberts and James P. Hall, as members; a committee on agency, of which Major Edgar B. Tolman was chairman, and Messrs. William Browne Hale and Henry M. Bates, members; a committee on conflict of laws, of which the Honorable George W. Alter was chairman and the Honorable Benjamin N. Cardozo and Honorable Arthur P. Rugg members, and a committee on contracts, of which the Honorable Nathan

Matthews was chairman and the Honorable Learned Hand and James Byrne, Esq., members. The reports which have been sent to the members of the institute for their consideration and for discussion at this meeting have been transmitted through the executive committee after conferences between the reporters and some of their advisers and these respective sub-committees. The material which is submitted to you therefore represents the combined efforts and the matured comment of a number of minds, and it is to be hoped that in their criticism members of the institute will have in mind that every sentence, indeed, every word in these various drafts is the result of careful, critical and analytical thought and deliberate studied expression."

The restatements submitted to the fourth annual meeting does not represent the sum total of the work done by the council. This is shown by the report of Director William Draper Lewis. In this report the director gave a brief account of the progress of the work of restatements to date. He stated:

"Three tentative drafts dealing respectively with parts of the conflict of laws, contracts and torts. They have submitted to this meeting tentative drafts of additional parts of these subjects containing in all 167 sections and a tentative draft of the first part of the law of agency containing 155 sections. The preliminary drafts completed by the respective groups last fall were submitted to the members of the council in November and considered at a meeting of that body in New York City on December 16, 17, 18 and 19. The drafts before you are the preliminary drafts so submitted as amended by the council and by the special committee of the council to which I shall presently refer.

"Thus, except in agency where the tentative draft before you represents two years of work, the tentative drafts you will consider at this meeting represents a year's work on the part of the respective editorial groups covering the period from the fall of 1924 to the fall of 1925. While, therefore, there have been since the last annual meeting nineteen conferences covering in all seveny-five days, the eight conferences which have been held since last October have been devoted to the discussion of preliminary drafts of parts of the respective subjects which will be considered not at this but at your next annual meeting. Already the sections relating to termination in agency and contractual rights of persons not parties to the contract are almost ready for submission to the council."

It will be recalled from the report to this body of your committee last year that Governor Hadley suggested in "A survey of the statement of defects of criminal justice" that the institute might interest itself in criminal law and criminal procedure. The

plan of this work on criminal procedure was given in the director's report.

"The council at its meeting on May 1 last, after determining that work on criminal procedure should take the form of a code of laws and court rules and should began as early as practicable, authorized the executive committee to invite Herbert S. Hadley, Hon. Henry L. Stimson, Judge Chas. C. Nott, Jr., Judge Harry Olson and William E. Mikell to act with members of the executive committee as a special committee to prepare a plan of work to be followed in the preparation of the code. The special committee thus authorized began work at once. Their report, submitted to the council last December, embodies a detailed examination of the scope of the proposed work and a tentative outline of the code, a plan of work, and a preliminary draft of an indictment act and matters pertaining thereto.

"William E. Mikell and Edwin R. Keedy have been appointed reporter and associate reporter, respectively.

"It is the opinion of the members of the special committee and the reporters that the topics first undertaken should be those in which serious defects in existing procedure are believed to exist. Consequently, the preparation of the tentative drafts may occasionally depart from strictly logical order, though the preliminary drafts on which the reporters are now at work do relate to what is logically the first part of the completed code, namely, arrest, preliminary hearing and bail. A preliminary draft of a substantial portion of these subjects will be discussed at a conference between the reporters and their advisers in June. The advisers will include those members of the special committee who are especially cognizant of the subjects to be discussed. It is too early yet to determine whether any parts of the code will be submitted to the council next December, though there is much reason to believe from the amount of work already done that this may be the case.

"There is one misapprehension in regard to this code of criminal procedure to which I wish to revert. The code should not be thought of as a single statute, but rather as a series of model statutes dealing with the different topics properly included under the term criminal procedure. Defects in criminal procedure are not uniform throughout the several states. For instance, the outworn technicalities connected with indictment, while serious in one group of states, in another already have been largely rectified. It is, therefore, unlikely that any state, at least, for some time after the final official publication of the code, will desire to adopt it as a whole; it is much more likely that each state will be inter-

ested in those suggested reforms which attempt to remedy serious defects in its existing procedure."

It cannot be denied that the three days session was a strenuous one. The more serious work was interrupted on the afternoon of Friday at 4:30 p. m. for the reception at the White House by President and Mrs. Coolidge.

The hard work and the long sessions were all in a measure relieved, if not forgotten, by the dinner at the Mayflower hotel, which closed the session. President Wickersham presided. Addresses were made by Hon. Frederick E. Crane, justice, New York court of appeals; Hon. Floyd E. Thompson, justice, supreme court of Illinois, and Dean Roscoe Pound of the Harvard law school.

These addresses were a fitting climax to the work of the previous three days. Dean Roscoe Pound of the Harvard law school made the significant suggestion that in no other country in the world would it be possible for such a group of men to be assembled to do the work that was being done by this institute. If any continental country in Europe should undertake the work of this nature it would first have to be authorized by the government. Its proceedings, its discussions, and its entire work would be hedged about and regulated by governmental red tape. Here members of a single profession on their own initiative, without governmental aid or sanction, attempt a work of vital interest to all citizens. A work, which if done well, will touch the political, the economical and the social interests of the entire country.

The American Law Institute has set for itself a monumental task. It has begun that task with a brave heart. Its success to date should spur it on to greater and more sustained efforts. Mr. Root says, "I think we are taking the early steps in the creation of a great power in the preservation of all we hold dearest and most valuable for our country." Mr. Root is right because of the work being done by the American Law Institute gives to the judges, the practitioners and the teachers a chance to cooperate in performing a great social service in the name of the American Bar.

The reporters are all great teachers in our great national law schools. This is natural. The multiplicity of our jurisdiction, each with its court of last resort, produces a tangle of legal principles, the reduction of which to systematic form has hitherto defied the efforts of text book writers. These reporters are assured of long tenure of service. It is the settled policy of the greater law schools to encourage research. Every reporter has been schooled in the Case System of teaching law. This has

better fitted him for the task of making our law simpler. This leaves the judges and the practicing lawyers unbiased toward the restatements and free to criticize them at the annual meetings. The judges and lawyers apply the test of practicability to what the reporters have restated. Thus making it possible to approach the stated aims of the institute, namely, "to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific work.

RECOMMENDATIONS OF COMMITTEE ON AMERICAN LAW INSTITUTE

It is the sincere wish of the president and of our committee that active and adequate measures be taken to arouse and stimulate interest among the members of the bar in North Dakota in the great work of the American Law Institute, the work of preparing a restatement of the law; a restatement of the common law of England and America, to the end that such revisions may promote its clarification and amplification, its better adaption to social needs, and secure a speedier administration of justice.

The project of the American Law Institute is a colossal undertaking, surpassing in magnitude and boldness of design, the aims of Justinian or the writers of the Napoleonic code. But unlike these great compilers, we are not engaged in laying down, with all the power of a despotic empire behind us, what shall be the law, but are engaged in securing the voluntary recognition on the part of the legal profession of a definite and orderly statement of legal principles. Hence the work can never succeed without the active support of the judiciary and bar of the United States.

It is imperative, naturally, that the work of the restatement be pre-eminently well done, but it is equally important that the members of the bench and bar throughout the length and breadth of the land have knowledge of, and confidence in the processes by which the restatement is developed. To bring this about, it is highly desirable that the tentative drafts of those portions of the restatements which have already been prepared, and those which will be produced in the future should be distributed, not only among the members of the institute, but among the members of the legal fraternity at large, with a view to friendly criticism and suggestion for improvement. This distribution also will stimulate interest in the work, and will obtain the co-operation of the legal profession in perfecting it.

At present the institute is engaged on a restatement of the law of contracts, conflict of laws, torts, agency and business associa-

tions, and it is hoped this fall to begin work on the restatement of the law of property. Several tentative drafts of portions of these subjects are now ready for distribution by the institute. They are as follows:

In Contracts

Restatement No. 1—72 sections covering definition and formation of contracts.

Restatement No. 2—57 sections covering consideration and its sufficiency; formation of formal and informal contracts, and joint contractual rights and obligations.

In Torts

Restatement No. 1—77 sections dealing with battery, assault, and false imprisonment.

Restatement No. 2—30 sections dealing with self defense, defense of third persons and defense of possession of real and personal property.

In Conflict of Laws

Restatement No. 1—42 sections dealing with domicile.

Restatement No. 2—83 sections, covering jurisdiction in general and jurisdiction of courts.

In Agency

Restatement No. 1—155 sections dealing with definitions and distinctions; acts for which agency may be created; competency of parties; appointment of agents and servants, and the evidence thereof; appointment of agents by other agents and delegation of authority, and ratification.

In addition to these portions of the restatements there is also ready for distribution accompanying commentaries in connnection with some of the topics. There are therefore at this time awaiting your call and demand seven tentative drafts of portions of the topics now under preparation. While these drafts have been prepared by experts, and have been revised and examined and criticized many, many times by the reporters and their assistants and advisors and the executive council of the institute, before even permitting them to be printed and sent out to the members, yet they are the mere work of men like ourselves and subject to error. It is the criticism of the actual practitioner at the bar that is desired.

The membership of the American Law Institute is limited to seven hundred and fifty members. At this time, perhaps, the entire membership does not exceed four hundred, and while it comprises many of the most distinguished members of the bench and bar and law schools of the United States, yet they constitute, after all, but a very small portion of the membership of the forty-eight state bar associations. The ideal situation, and one to be looked forward to, is when every lawyer in the United States shall have these tentative drafts in his library and will use them in connection with every question which arises in his practice touching the subjects covered by them. By this everyday, homely use, errors may be found, suggestions of needed improvements will be made, criticism and discussion will follow which must aid in clarifying, condensing and simplifying the work. Because after all it is the work of the American bar undertaken in response to the growing feeling that we as lawyers owe a duty to the American people, and a duty which we alone have the ability to perform, namely, the removal from our jurisprudence of much of its confusing uncertainty, its complexity, and unnecessary procrastination and delay.

These tentative drafts cannot be placed in the hands of attorneys without expense. The institute, while it receives from the Carnegie Corporation for the conduct of the work, $110,000 anually, faces a tremendous annual budget, and cannot furnish these restatements free of charge. It suggests two plans of distribution. First, that the bar association purchase copies from the institute and then re-sell them to its members; or, secondly, that the bar association send out circulars to each of its members explaining how they may purchase one or more copies directly from the institute. Under the first plan, the institute sells the restatements directly to the bar association in lots of not less than twenty-five and at a net price, the bar association then retails them to its members at practically a twenty per cent advance, to cover cost of circulars and mailing. The cost of these restatements varies from forty cents on contracts number one, to ninety cents each for agency number one.

Last fall the executive committee of our state bar association placed at the disposal of this committee for purchasing copies of the restatements the sum of $50. The secretary, Mr. Wenzel, ordered twenty-five copies of each draft, at a total cost of about $75. Then in "Bar Briefs" in February, and again in March, the lawyers of the state were notified that these restatements could be procured at an a verage cost of fifty cents per copy. The response was not very enthusiastic or encouraging. Only ten lawyers in the state availed themselves of the opportunity, with

a total subscription of $28. They were Messrs. G. W. Twiford, H. L. Halvorson, J. H. Lewis, Paul Campbell and J. J. Coyle, of Minot; Benton Baker, of Bismarck; Messrs. Aylmer & Aylmer, of Jamestown; Judge Thos. H. Pugh, of Dickinson; Horace C. Young, of Fargo, and A. M. Kvello, of Lisbon. This is a very small group compared with the number of attorneys in the state. In Illinois up to May first, last, five hundred copies of each of the restatements had been taken by members of the Illinois Bar association. We have a membership in this association of between five hundred and six hundred members. Surely we should be able to place one hundred copies of each of the restatements with lawyers who would be interested, and who would read them and offer suggestions. You need not necessarily be an expert in any of the topics upon which the work of the restatement h as begun, not at all. I assure you that criticism will be cheerfully received by any of the reporters and their advisors, and the institute itself furnishes blank forms for these criticisms.

The committee respectfully makes the following recommendations:

1. That the secretary annually prepare and send to each member of this association a circular explaining the nature of the tentative drafts of all portions of the restatements ready for distribution by the American Law Institute, and stating the cost of single copies. That attached thereto shall be an order blank in suitable form and conveniently drawn for checking the copies desired by the member receiving it.

2. That when such orders are received the secretary shall purchase the necessary copies and fill such orders.

3. That in each city of the state, where there are a sufficient number of lawyers interested in studying the restatements, that the president of this association appoint a committee of three whose duty it shall be to endeavor to secure the co-operation of all the attorneys in passing upon the tentative drafts, and formulating suggestions and criticisms, and recommend that regular meetings be held for such purpose. That the president of this association urge upon such committee the importance of the work and render such assistance as he can in establishing such study clubs.

4. That the chairman of such committee thus appointed shall be a member of the standing committee of the American Law Institute of the North Dakota Bar association, and shall report

to the chairman of such committee from time to time of the progress of the work.

GEO. M. MCKENNA, Chairman.
O. P. COCKERILL, Vice Chairman.
HORACE C. YOUNG
W. L. NUESSLE
B. F. SPAULDING
RODGER W. COOLEY
GEO. A. BANGS
IVER A. ACKER

PRESIDENT YOUNG: What will you do with the report?

MR. CASEY: I move we adopt the report and place it on file.

Mr. Nuessle seconded the motion.

PRESIDENT YOUNG: It is now 5 o'clock and as I stated to you this morning, they will expect us on the hill. We want you to get the view from the top of the hill. If you don't care for the scenery, we want you to have such refreshments as the ladies want to serve. And if you don't care for the scenery and refreshments, we want you to meet seventy-five fine ladies.

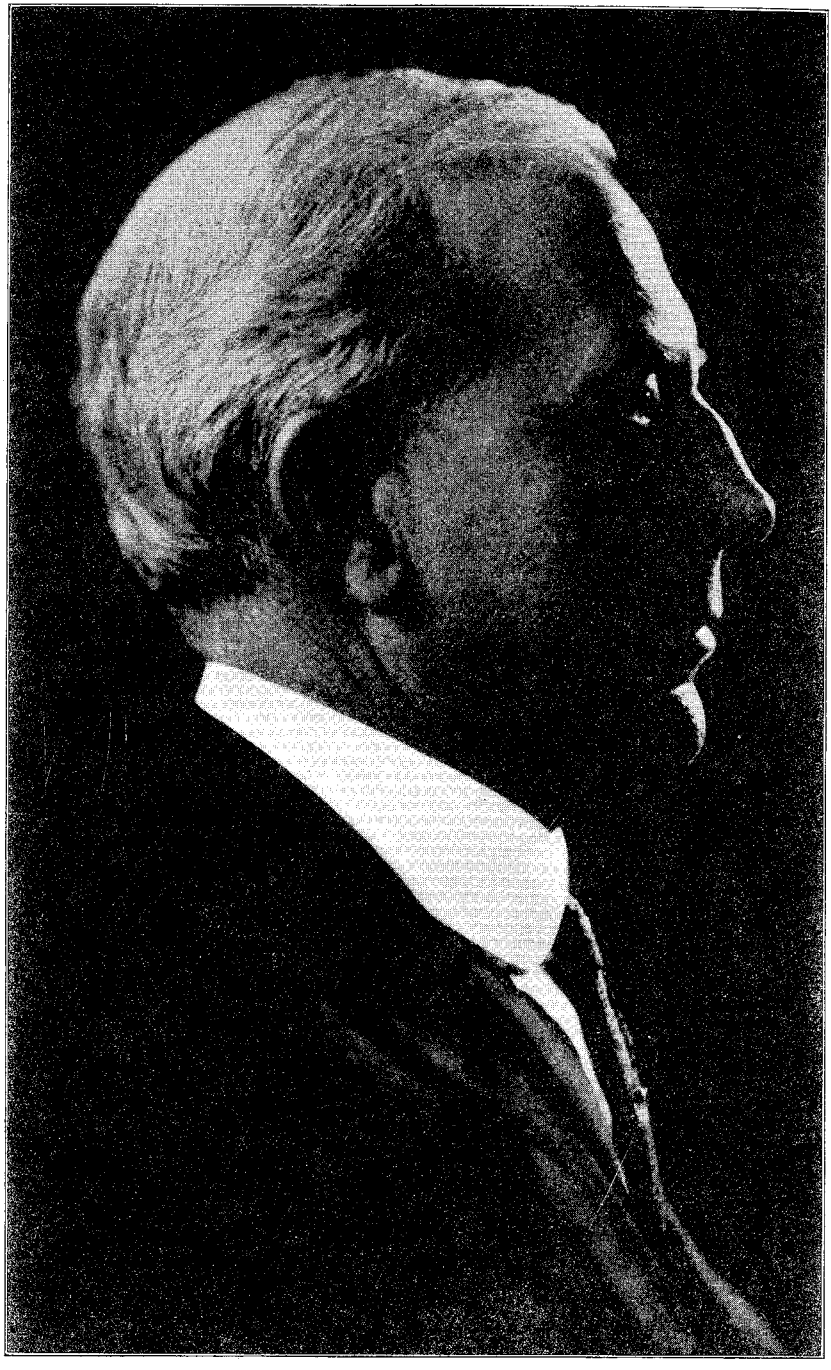
I want to say you don't need to be alarmed about the status of our program. Several committees have no report to submit. We are not behind as to time. Now Mr. Stutsman has an announcement to make.

MR. STUTSMAN: The committee on the powers of judges will meet here immediately on adjournment. As some of the members of the committee do not know they are on the committee, I shall read the names.

MR. WENZEL: I want to supplement the statement of our president. Go out to the country club. They have what looked looked like a train load of food and don't know what to do with it.

PRESIDENT YOUNG: We are ready to consider the motion to adjourn.

Said motion was promptly made, seconded, and carried.



MELVIN A. BRANNON
Chancellor Montana University